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Code Commissioner

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Distribution

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Systems and Programming

Henry Trenk

Published by the
MONTANA LEGISLATIVE COUNCIL
Room 138, State Capitol
Helena, Montana 59620
Telephone (406)449–3064
1981

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MONTANA CODE ANNOTATED
1981

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CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

Section
37-1-101. Duties of department.

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.
37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.
37-1-104. Standardized forms.
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Part 1

Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in the introductory clause.

Chapter 293 deleted "a pro rata basis according to the number of man-days and the actual operating costs of the department for each board" in (6); added "an equitable basis as determined by the department" to (6).

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.

37-1-104. Standardized forms. It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms and facilitate automated printing and computerization.

History: En. Sec. 2, Ch. 293, L. 1981.

Compiler's Comments

Codification Instruction: Section 5, Ch. 293, L. 1981, provided: "Sections 2, 3, and 4 [37-1-104 through 37-1-106] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1 apply to sections 2, 3, and 4."

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981.

Compiler's Comments

Codification Instruction: Section 5, Ch. 293, L. 1981, provided: "Sections 2, 3, and 4 [37-1-104 through 37-1-106] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1 apply to sections 2, 3, and 4."

37-1-106. Biennial report to governor and legislature. The department, in cooperation with each licensing board, shall prepare a biennial report. In addition to the information prescribed by the governor under 2-7-102, the biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant.

History: En. Sec. 4, Ch. 293, L. 1981.

Compiler's Comments

Codification Instruction: Section 5, Ch. 293, L. 1981, provided: "Sections 2, 3, and 4 [37-1-104 through 37-1-106] are intended to be codified as an integral part of Title 37, chapter 1, and the provisions of Title 37, chapter 1 apply to sections 2, 3, and 4."

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981.

Compiler's Comments

1981 Amendment: Substituted "director of commerce" for "director of professional and occupational licensing" in the introductory clause.

37-1-122 through 37-1-129 reserved.

37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of commerce.

History: En. Sec. 5, Ch. 274, L. 1981.

Compiler's Comments

Codification Instruction: Section 20(1), Ch. 274, L. 1981, provided: "Section 5 is intended to be codified as an integral part of Title 37, chapter 1, part 1, and section 5 applies to that part."

37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by the legal counsel appointed under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Compiler's Comments

Preamble: The preamble to SB 312 (Ch. 244, L. 1981) read:

"WHEREAS, during the course of the Legislative Audit Committee's review of regulatory and licensing boards under the first two sunset cycles it was noted that appointments by the Governor to some boards must be made from lists submitted by private associations; and

WHEREAS, requirements tying board membership to private associations have been struck down by the courts in a number of states; and

WHEREAS, the opportunity for members of the public and private associations to submit nominees to the Governor for board appointments is in the public interest.

THEREFORE, it is the intent of this bill to delete requirements that appointments by the Governor to regulatory and licensing boards must be made from lists submitted by private associations and to provide that members of the public and private associations may submit nominees to the Governor for appointment to regulatory and licensing boards."

Codification Instruction: Section 10, Ch. 244, L. 1981, provided: "Section 9 [37-1-132] is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of section 9 apply to Title 37."

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $25 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-501, for each day in which 6 or more hours are spent on official board business. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981.

Compiler's Comments

1981 Title: The title to SB 463 (Ch. 474, L. 1981) read: "An act to provide for uniform compensation and travel expenses for the boards of county printing, veterans' affairs, athletics, medical examiners, dentists, osteopathic physicians, podiatry examiners, pharmacists, nursing, nursing home administrators, optometrists, physical therapy examiners, chiropractors, rodiologic technologists, speech pathologists and audiologists, hearing aid dispensers, psychologists, veterinarians, morticians, barbers, cosmetologists, massage therapists, sanitarians, public accountants, realty regulation, architects, landscape architects, professional engineers and land surveyors, plumbers, and the state electrical board, state banking board, and the commission for human rights; amending sections 2-15-1102, 2-15-1706, 2-15-2202, 23-3-102, 32-1-201, 37-3-206, 37-4-203, 37-4-204, 37-5-202, 37-6-201, 37-7-202, 37-8-203, 37-9-201, 37-10-203, 37-11-203, 37-12-202, 37-14-201, 37-15-203, 37-16-203, 37-17-201, 37-18-203, 37-19-201, 37-30-202, 37-31-202, 37-33-202, 37-40-202, 37-50-202, 37-51-205, 37-65-202, 37-66-201, 37-67-203, 37-68-202, and 37-69-203, MCA."

Preamble: The preamble to SB 463 (Ch. 474, L. 1981) read:

"WHEREAS, during its sunset reviews of licensing and regulatory boards the Legislative Audit Committee noted that compensation and travel expenses for the boards vary considerably from board to board; and

WHEREAS, the various boards have very similar duties and responsibilities.

THEREFORE, it is the intent of this act to provide for the payment of uniform compensation and travel expenses for members of state licensing and regulatory boards."

Codification Instruction: Section 35, Ch. 474, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 37, chapter 1, part 1."

37-1-134. Licensing boards to establish fees commensurate with costs. All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981.

Compiler's Comments

Preamble: The preamble to Chapter 345, L. 1981, provided:

"WHEREAS, most fees set by professional and occupational licensing boards are specified or limited in amount by law; and

WHEREAS, such limitations are not necessarily serving the purpose intended in that the fees are not related to costs incurred and board revenues are insufficient in some cases and excessive in others.

THEREFORE, it is the intent of this act to authorize and require such licensing boards to set fees reasonably related to the costs of administering the various programs under their jurisdiction."

Statement of Intent: The statement of intent attached to SB 412 (Ch. 345, L. 1981) provided: "A statement of intent is required for Senate Bill 412 because it grants licensing boards within the Department of Professional and Occupational Licensing the authority to set fees.

Presently fees charged by most licensing boards are set by law. Wherever changed circumstances require a change in fees legislation is required. Each session several bills are introduced to modify board fees. By allowing boards to set their own fees, flexibility is provided the boards to meet changing circumstances. At the present time, fees set by law are not based upon actual costs incurred by licensing boards in carrying out their various functions.

It is the intent of the Legislature that fees set by licensing boards be reasonably related to the costs of the respective programs. "Programs" of the licensing boards are intended to be such areas of responsibility as applications, examinations, renewals, and reciprocity. "Reasonably related" is intended to mean that the department generally breaks down the costs associated with the various programs and sets each fee at a level to cover these costs and the costs of maintaining the ongoing operations of the board. "Reasonably related" does not mean the department is required to maintain an exact system of actual costs, but rather means the department should generally allocate costs of the program equitably among the various fee categories."

Codification Instruction: Section 69, Ch. 345, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 37, chapter 1."

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: En. Sec. 1, Ch. 242, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 242, L. 1981 (SB 309), read: "An act to require any person, firm, corporation, or association that performs investigations or reviews for a state professional or occupational licensing board to make the records of the review or investigation available to the board and the legislative auditor."

Codification Instruction: Section 2, Ch. 242, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 37, chapter 1, and the provisions of section 1 apply to Title 37."

37-1-136. Disciplinary authority of boards — injunctions. (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 1, Ch. 246, L. 1981.

Compiler's Comments

1981 Preamble: The preamble to Chapter 246, L. 1981, provided:

"WHEREAS, during its sunset review of licensing boards, the Legislative Audit Committee noted that disciplinary authority of some boards over licensees is not specified in the law and that consequently some boards are hesitant to take disciplinary action against licensees.

THEREFORE, it is the intent of this act to specify the disciplinary authority of the boards allocated to the Department of Professional and Occupational Licensing."

Statement of Intent: The statement of intent attached to SB 407 (Ch. 246, L. 1981) provided: "SB 407 requires a statement of intent because it grants each licensing board allocated to the Department of Professional and Occupational Licensing the authority to adopt specifying grounds for disciplinary action and the type of action that may be taken.

Each board adopting new substantive or procedural rules under SB 407 is to specify both the grounds upon which each type of disciplinary action may be taken, and the procedure to be used for each action. Each board using a disciplinary action not specified in subsections (1)(a) through (e) but considered proper under (1)(f) must also state in the rule the grounds upon which disciplinary action may be taken and the applicable procedure.

No rule shall specify disciplinary action for failure to renew any license or certificate, pay any fee or participate in any program of continuing education unless the renewal, fee or participation is required by statute.

Rules authorized by both SB 407 and by other provisions of law and previously adopted under such other provisions need not be readopted under SB 407."

Codification Instruction: Section 2, Ch. 246, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 37, chapter 1, part 1."

Part 2

Licensure of Criminal Offenders

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

Section
37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
Sections 37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.

37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.

Part 1

Dispensing of Drugs

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, or chiropody (podiatry) and in such practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to such pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but such term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which such medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but such term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "the official" after "Pharmacopoeia" in subsection (2)(a); deleted "office, pharmacy, drugstore, or other" from the definition of pharmacy in subsection (4); substituted "requiring a prescription" for "at retail" in subsection (4).

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his

patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of such medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples.

History: En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a

term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Part 2

Nonliability for Peer Review

37-2-201. Nonliability for peer review — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979.

Part 3

Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500,

imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines shall be paid to the county treasurer of the county in which the violation occurs.

History: **(1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part).**

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: **En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.**

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: **En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.**

CHAPTER 3

MEDICINE

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Part 1

General

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

(b) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(4) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician's assistant in accordance with Title 37, chapter 20; and

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "appropriate amount and type of supervision" for "personal and responsible direction and" as regards paramedical specialists and technicians in (1)(l); inserted subsection (1)(m); inserted "with the exception of those licensees who hold a medical degree" after "licenses and," near the middle of (2).

Part 2

Board of Medical Examiners

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: **En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.**

Compiler's Comments

Transfer of Regulation: The preamble to SB 393 (Ch. 87, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: **En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.**

Compiler's Comments

Continuing Licensure of Current Licensees: Section 3, Ch. 87, L. 1981, provided: "Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act [July 1, 1981]."

37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter.

History: **En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted former subsection (2) requiring board approval of department hiring and other matters.

Continuation of Existing Rules: Section 5, Ch. 87, L. 1981, provided: "Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners."

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: **En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.**

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: **En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.**

Compiler's Comments

Transfer of Funds and Records: Section 4, Ch. 87, L. 1981, provided: "By the effective date of this act [July 1, 1981], all funds and records of the board of osteopathic physicians shall be transferred to the board of medical examiners."

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "shall receive" for "$25 per day compensation while traveling to and from board meetings and while attending board meetings and for each full day away from home while conducting board business, plus travel expenses as provided for in 2-18-501 through 2-28-503, while in the active and necessary discharge of his duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-3-301. License required — kinds of certificates. (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

(a) physician's certificate, which is subject to annual registration;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: (1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part).

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience.

History: En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.

37-3-305. Qualifications for licensure. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before the board unless such appearance has been specifically waived by the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No person may be granted a temporary license to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "all applicants including applicants for a temporary license, shall pay an initial application fee as prescribed by the board" for "all applicants except applicants for temporary licenses shall pay an initial application fee of $100" in (2); and deleted former subsection (3) which provided for a $25 fee for temporary licenses and renewals.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least 30 days prior to the announced date of the examination.

If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.

History: **En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032.**

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: **En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.**

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers may not disclose the name of an applicant but shall be identified by a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(3) The board may use other Montana physicians to assist in preparing the examination.

(4) A person may not be granted a license to practice medicine if he fails to attain an average grade of at least 75%. If an applicant fails to meet the minimum grade requirements in his first examination, he may, after not less than 6 months or more than 12 months, be reexamined. He may take one additional examination but not less than 1 year after the date of the last preceding examination. An examination fee shall be charged for each additional

examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed the sum of $100," after "an annual registration fee" in the first sentence of (1); deleted "in an amount not to exceed $50" after "a fee prescribed by the board" in the second sentence of (1); substituted "may be reinstated on the payment of a fee prescribed by the board" for "may be reinstated on the payment of a fee not to exceed $50" near the end of (1); and substituted "prescribed by the board" for "of $10" after "together with a delinquency penalty" near the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the earmarked revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043.

37-3-315 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.

37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) willful disobedience of the rules of the board;

(5) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(6) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(7) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(9) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public;

(10) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(11) testifying in court on a contingency basis;

(12) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(13) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(14) gross malpractice or negligent practice;

(15) practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(16) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them; or

(17) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979.

37-3-323. Revocation or suspension of license — probation. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records

and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or

cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: **En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.**

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: **En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.**

Part 4

Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

History: **En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053.**

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

Compiler's Comments

1981 Amendment: Inserted the second sentence pertaining to reporting of settlements; added "and the basis of the settlement or court decision" at the end of the section.

Preamble: The preamble to Ch. 243, L. 1981, provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Medical Examiners and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Medical Examiners be reestablished under existing statutory authority."

Effective Date: Section 5, Ch. 243, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

Part 1 — General

Section
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37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.
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37-4-406. Annual renewal fee — revocation of license.
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Part 5 — Regulatory Provisions

37-4-501. Work order for construction or repair of appliances.
37-4-502. Restrictions on advertising and solicitation.
37-4-503. Identification of dentures.

Part 1

General

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

Chapter 363 changed "board of dentists" to "board of dentistry" in (1)(a).

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist" or the letters "D.D.S.", "D.M.D.", or like letters to his or her name in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions. Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board, provided such dental procedures are a part of the assigned teaching curriculum.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979.

Part 2

Board of Dentistry

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Four members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 363 deleted the last two sentences of (2) relating to emergency funds.

Chapter 474 substituted language after "shall" in (1) for "be reimbursed as follows: (a) $25 per day for each day in actual attendance at a meeting of the board; (b) expenses and travel authorized under 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

37-4-204. Affiliation with national association authorized — delegate. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send a delegate to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 363 deleted former subsection (3) relating to railroad fares; and made minor changes in phraseology and punctuation.

Chapter 474 deleted subsections (1) through (3) relating to delegate reimbursement.

Board Compensation and Travel Expenses — Preamble and Title: The title and preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the compiler's comments under 37-1-133.

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Part 3

Licensing

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

(9) The board may in its discretion permit a dental student who has successfully completed his junior year in a recognized dental school and who files proof satisfactory to the board that he has the preliminary education described in this section to take a written examination in the subjects he has completed. Satisfactory grades secured shall be credited on the final examination of the student. The board shall require a fee commensurate with costs

and set by the board for this examination, which shall apply on the final examination taken by the applicant.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-302. Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons, and practices required for such recognition by the council on dental education of the American dental association.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924.

37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee as prescribed by the board shall be charged for issuing the certificate.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 66 deleted former subsection (1) relating to registering a certificate with the county clerk and recorder.

Chapter 345 substituted "a fee as prescribed by the board" for "a fee of $10" in (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Preamble: The preamble to SB 307 (Ch. 66, L. 1981) provided:

"WHEREAS, during the course of its sunset audits the legislative audit committee noted that licensees of several professions are required to register their licenses with the county clerk and recorder; and

WHEREAS, all such licensees are licensed by the state and county registration serves no public purpose.

THEREFORE, it is the intent of this bill to delete county registration requirements for members of various professions."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee as prescribed by the board, and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "on the payment of a fee as prescribed by the board" for "on the payment of a fee of $50" near the end of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-307. Annual renewal fee — absent registered dentist — default. (1) A licensed dentist practicing within this state shall annually pay to the department before March 1, as a renewal fee for the year, a sum set by the board. Notice of the change in the amount of renewal fees shall be given to each dentist registered in this state by the department.

(2) If a registered dentist absents himself from the state for a period of 1 or more years or does not engage in active practice within this state, he may continue his license in good standing by a payment set by the board each year or at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year's absence. The annual

payments shall be made prior to March 1 of each year, and a receipt or certificate shall be issued by the department.

(3) In case of default in payment of the annual renewal fee by a dentist, his license shall be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the party failing to comply with this requirement, as the address appears on the records of the department, constitutes sufficient notice of revocation of license, but no license may be revoked for nonpayment if the dentist notified pays the renewal fee plus a late payment penalty prescribed by the board before or at the time fixed for consideration of revocation. The department may maintain in the name of this state a suit to collect renewal fees and penalties applicable and to recover from the delinquent dentist the cost of the action, including reasonable attorneys' fees.

(4) No license fee or tax may be imposed on dentists by a municipality or any other subdivision of the state.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted "and not to exceed $50." Chapters 345 and 363 deleted "The board may increase or decrease the annual renewal fee to maintain in the earmarked revenue fund at all times an amount, to be known as the emergency fund, to be used for the purpose of administering, policing, and enforcing this chapter. The emergency fund shall be maintained at an approximate level of $2,500" after "a sum set by the board" in (1); Ch. 345 deleted ", not to exceed $25," after "a payment set by the board each year" in (2); substituted "a fee prescribed by the board" for "a fee of $25" in (2); and substituted "penalty prescribed by the board" for "penalty of $10" in the middle of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-308 through 37-4-320 reserved.

37-4-321. Grounds for disciplinary proceedings — range of sanctions. The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter for any of the following causes:

(1) physical or mental incompetence;

(2) gross malpractice or repeated malpractice;

(3) unprofessional conduct, as defined by rule of the board; or

(4) violation of any of the provisions of this chapter or rules or orders of the board.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1) relating to conviction of a felony or misdemeanor.

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Severability: Sec. 6, Ch. 493, L. 1979, was a severability clause.

Statement of Intent: The statement of intent adopted with HB 585 (Ch. 493, L. 1979) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Board of Dentists for the purpose of defining unprofessional conduct.

Section 1 of the bill deletes a fairly specific list of types of unprofessional conduct by a dentist and allows the Board of Dentists to adopt a rule defining unprofessional conduct. It is the Legislature's intent that the Board's rule would reinstate some of the statutory examples, but would not adopt the present law's ban on advertising. The Board may prohibit only so much advertising as the courts would let a state prohibit. This is intended to comply with court orders issued at the behest of the FTC in Louisiana and other states.

Sections 1 and 3 also set up a range of sanctions that the Board may impose on any dentist or dental hygienist whose conduct constitutes grounds for sanctions. This is intended to expand the Board's powers on the less stringent end of the scale, by adding censure and probation to the revocation and suspension powers the Board now has. Often a problem can be corrected with such milder sanctions when efforts to suspend or revoke might be counterproductive."

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.

37-4-323. Procedure for investigation — sanctions. (1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license.

History: En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.

Compiler's Comments

Severability. Sec. 6, Ch. 493, L. 1979, was a severability clause.

Statement of Intent. The statement of intent adopted with HB 585 (Ch. 493, L. 1979) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Board of Dentists for the purpose of defining unprofessional conduct.

Section 1 of the bill deletes a fairly specific list of types of unprofessional conduct by a dentist and allows the Board of Dentists to adopt a rule defining unprofessional conduct. It is the Legislature's intent that the Board's rule would reinstate some of the statutory examples, but would not adopt the present law's ban on advertising. The Board may prohibit only so much advertising as the courts would let a state prohibit. This is intended to comply with court orders issued at the behest of the FTC in Louisiana and other states.

Sections 1 and 3 also set up a range of sanctions that the Board may impose on any dentist or dental hygienist whose conduct constitutes grounds for sanctions. This is intended to expand the Board's powers on the less stringent end of the scale, by adding censure and probation to the revocation and suspension powers the Board now has. Often a problem can be corrected with such milder sanctions when efforts to suspend or revoke might be counterproductive."

37-4-324. Board may procure court order to compel attendance of witnesses — contempt. (1) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board or any member thereof shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof.

(2) In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the board or any member thereof before whom the testimony is to be given or produced may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the witness has failed and refused to attend or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena or has refused to answer questions propounded to him in the course of such proceedings and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board or a member thereof and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.

37-4-326. Acts constituting misdemeanors. Any person, company, or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or by both such fine and imprisonment who shall:

(1) sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchase or procure by barter any such diploma, certificate, or transcript with intent that the same shall be used as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating such practice;

(3) with fraudulent intent, alter in a material regard any such diploma, certificate, or transcript;

(4) use or attempt to use any such diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the required annual registration certificate for the current year; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to said board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of said person, company, or association at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said

person, company, or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company, or association in any proceeding under this section.

History: En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918.

37-4-327. Practicing dentistry without certificate — penalty. (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Part 4

Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene. The practice of dental hygiene is the doing by one person for a direct or indirect consideration, with respect to the teeth of another person, an act or service, educational, therapeutic, prophylactic, or preventive in nature, as the board in writing defines and authorizes. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs, medications, or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part).

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in subsections (1), (2), and (3) of 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part, a practical or clinical part, and an oral interview with the board which may include questions pertaining to the practice of dental hygiene. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant.

(6) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with Ch. 337, L. 1979, provided: "A statement of intent is required for HB 233 because the bill amends sections 37-4-301, 37-4-402, and 37-4-406, MCA, to give the Board of Dentists rulemaking authority regarding examination and application procedures for dentists and dental hygienists. The following explains the intent of the Legislature regarding the rulemaking authority granted by this bill.

Sections 37-4-301 and 37-4-402 give the Board of Dentists the right to administer their own exams for dentists and hygienists, respectively. The rulemaking authority delegates power to the Board for making rules for running its own examinations. This is intended to be a continuation of existing authority, and rules now in effect may not have to be substantially revised.

In addition, section 37-4-301 gives the Board power to set the examination and licensure fees for dentists. These are to be "commensurate with cost" and it is intended that the Board publish data on the actual costs of examination in the notice of proposed rulemaking.

Sections 37-4-301 and 37-4-402, MCA, give the Board of Dentists the authority to make rules for application procedures for dentists and hygienists, respectively. It is intended that these rules would cover routine matters not provided for in the statute.

Sections 37-4-307 and 37-4-406, MCA, require licensed dentists and hygienists, respectively, to pay an annual renewal fee that is set by the Board. It is intended that these fees, as established through administrative rules, should not exceed during the next biennium, $20 to $25 for dentists and $10 for hygienists. These fees, as required by statute, are for the purpose of maintaining an emergency fund that is used for administering and enforcing the statutes relating to dentistry and dental hygiene. If, during the next biennium, some unforeseen, complex legal proceeding arises involving the Board, the fees intended for this biennium would be increased to defray such additional costs."

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee prescribed by the board, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "on the payment of a fee prescribed by the board" for "on the payment of a fee of $15".

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee prescribed by the board and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) Except as provided in subsection (3) of this section, no license may be issued without an examination in theory to the applicant unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

(3) A dental hygienist who has been lawfully licensed to practice in another state or territory not having reciprocity with this state but which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state and who deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and his being a person of good moral character and of professional attainment, may, on the payment of a fee as prescribed by the board, be granted a temporary license authorizing the person to practice dental hygiene from the time of the granting of the license until the time of the next regular examination for dental hygiene set by the board. No additional fee for the examination may be charged.

(4) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "On the payment of a fee prescribed by the board" for "On the payment of a fee of $20" at the beginning of (1); and substituted "on the payment of a fee as prescribed by the board" for "on the payment of a fee of $20" near the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic authorized by the board.

(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care

facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation.

(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (3).

Effective Date: Section 10, Ch. 363, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

37-4-406. Annual renewal fee — revocation of license. (1) Before March 1 of each year, a licensed dental hygienist shall pay to the department a renewal fee set by the board. In default of payment, the board may, after hearing and on 30 days' notice, revoke the license of the hygienist in default; but the payment of the renewal fee on or before the time of hearing, with an additional sum set by the board excuses the default. The department may collect the fee by suit.

(2) The board may likewise revoke or suspend the license of a dental hygienist for violating this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed $25" after "a renewal fee set by the board" in the first sentence of (1); and deleted ", not to exceed $10," after "an additional sum set by the board" in the second sentence of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

37-4-408. Auxiliary personnel — employment, duties, and limitations. The board shall, within the limitations of this chapter, adopt rules which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office, except that nothing herein shall be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by dental auxiliaries, as permitted by board rules, shall be under the direct supervision of the licensed dentist employing such personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1.

Part 5

Regulatory Provisions

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: **En. Sec. 5, Ch. 493, L. 1979.**

CHAPTER 5

OSTEOPATHY

Part 1 — General

Section
37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians

(Repealed. Sec. 6, Ch. 87, L. 1981)

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.
37-5-302. Examination — examination fee.
37-5-303. Reciprocity.
37-5-304. Temporary certificates.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.
37-5-307. Renewal fee.
Sections 37-5-308 through 37-5-310 reserved.
37-5-311. Revocation of certificate.
37-5-312. Penalty for practicing osteopathy without a license.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "board of medical examiners" for "board of osteopathic physicians" and added the correct citation in (1)(a).

Transfer of Regulation: The preamble to SB 393 (Ch. 87, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

Continuing Licensure of Current Licensees: Section 3, Ch. 87, L. 1981, provided: "Persons presently licensed by the board of osteopathic physicians shall continue to be eligible for licensure by meeting current qualifications for licensure. No new qualifications for licensure may be required of persons licensed prior to the effective date of this act [July 1, 1981]."

Transfer of Funds and Records: Section 4, Ch. 87, L. 1981, provided: "By the effective date of this act [July 1, 1981], all funds and records of the board of osteopathic physicians shall be transferred to the board of medical examiners."

Continuation of Existing Rules: Section 5, Ch. 87, L. 1981, provided: "Current rules of the board of osteopathic physicians remain in effect unless amended or repealed by the board of medical examiners."

Effective Date: Section 7, Ch. 87, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of osteopathic physicians."

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Part 2

Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-5-201. En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec.

146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part 3

Licensing

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

Compiler's Comments

Transfer of Regulation: The preamble to SB 393 (Ch. 87, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Osteopathic Physicians and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Osteopathic Physicians be terminated and that regulation of osteopathy be transferred to the Board of Medical Examiners." See State of Montana Report to the Legislature, Sunset Review Board of Osteopathic Physicians, 79SS-6, Legislative Auditor, 1980.

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license shall be prescribed by the board.

History: **En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 87 deleted "except as otherwise provided in 37-5-201" at the end of (1).

Chapter 345 substituted subsection (4) for "(4) The fee for the examination and license is $20."

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective Date: Section 7, Ch. 87, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of osteopathic physicians."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-303. Reciprocity. A graduate of a reputable school of osteopathy who has been strictly examined and licensed to practice osteopathy in another state may be licensed to practice osteopathy in this state on production to the board of his diploma and the license obtained in the other state and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: **En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.**

37-5-304. Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: **En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.**

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: **En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.**

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee prescribed by the board to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee prescribed by the board to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "before April 1 of each year pay a renewal fee prescribed by the board" for "before April 1 of each year pay a renewal fee of $15" in the first sentence of (1); substituted "before April 1 of each year pay a renewal fee prescribed by the board" for "before April 1 of each year pay a renewal fee of $7.50" near the end of the first sentence of (1); substituted "on payment of a maximum fee prescribed by the board" for "on payment of $50" in the second sentence of (2); and substituted "if the lapsed fees exceed the maximum fee" for "if the lapsed fees exceed that amount" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-308 through 37-5-310 reserved.

37-5-311. Revocation of certificate. Any such certificate may be revoked by said board upon satisfactory proof of fraud or misrepresentation in procuring the same or for any violation of the provisions of this chapter or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

CHAPTER 6

PODIATRY

Part 1 — General

Section
37-6-101. Definitions.
37-6-102. Limitation on practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
37-6-105. Administration of drugs.

Part 2 — Board of Podiatry Examiners

37-6-201. Repealed. Sec. 10, Ch. 470, L. 1981.

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure — exemptions from examination.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — annual renewal fee — display.
37-6-305. Deposit of moneys collected.
Sections 37-6-306 through 37-6-310 reserved.
37-6-311. Refusal or revocation of license.
37-6-312. Penalty.

Part 1

General

37-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Chiropody" or "podiatry" means the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot.

(2) "Podiatrist" means one practicing podiatry.

(3) "Board" means the board of medical examiners provided for in 2-15-1841.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 2, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendment: In (3), substituted "medical" for "podiatry"; and substituted "2-15-1605" for "2-15-1608".

Preamble: The preamble to SB 392 (Ch. 470, L. 1981), read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Podiatry

Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry Examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners."

Effective Date: Section 11, Ch. 470, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of podiatry examiners."

37-6-102. Limitation on practice. A podiatrist may not amputate the human foot or toe or administer an anesthetic other than local.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Compiler's Comments

Codification Instruction: Section 9, Ch. 470, L. 1981, provided: "Section 3 is intended to be codified as an integral part of Title 37, chapter 6, part 1, and the provisions of Title 37, chapter 6, apply to section 3."

Part 2

Board of Podiatry Examiners

37-6-201. Repealed. Sec. 10, Ch. 470, L. 1981.

History: En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Compiler's Comments

Preamble: The preamble to SB 392 (Ch. 470, L. 1981) read:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, terminates the Board of Podiatry Examiners and requires a performance evaluation by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Podiatry Examiners be terminated, and that regulation of podiatrists be transferred to the Board of Medical Examiners."

Effective Date: Section 11, Ch. 470, L. 1981, provided: "This act is effective July 1, 1981, and the provisions of 2-8-121 do not apply to the board of podiatry examiners."

Part 3

Licensing

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a chiropodist or podiatrist, or in a sign or advertisement to use the word chiropodist or podiatrist, foot correctionist, or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part).

37-6-302. Qualifications for licensure — exemptions from examination. (1) Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board and have successfully passed the examination.

(2) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.

(3) A license may be granted, at the discretion of the board and upon payment of a fee prescribed by the board to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board.

History: En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "by payment of a fee prescribed by the board" for "by payment of $50" near the end of (2); and substituted "upon payment of a fee prescribed by the board" for "upon payment of $50" in (3).

Chapter 470 substituted "board" for "state board of podiatry examiners" in the second sentence of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutics, clinical and orthopedic podiatry, histology, bacteriology, pharmacy, neurology, surgery (minor), podiatry, foot orthopedica, shoe therapy, physiotherapy, roentgenology, hygiene and sanitation, ethics, and culture, limited in their scope to the treatment of the human foot, and, if qualified, shall receive a license.

(2) An examination and license fee prescribed by the board shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination.

History: En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "license fee prescribed by the board" for "license fee of $35" in (2).

Chapter 470 deleted the last sentence in (1) relating to the passing grade on examination.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-304. Designations on license — recording — annual renewal fee — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof or any other designation or title, except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot" so as not to mislead the public with respect to his right to treat other portions of the body.

(2) Licenses shall be recorded by the department the same as other medical licenses.

(3) A license renewal fee set by the board shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of an additional fee prescribed by the board.

(4) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

History: En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 66 deleted two sentences in (2) relating to recording the license with the county clerk.

Chapter 345 deleted "in an amount not to exceed $25" after "renewal fee set by the board" near the beginning of (3); and substituted "payment of an additional fee prescribed by the board" for "payment of a fee of $35" at the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble:

Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

The preamble to SB 307 (Ch. 66, L. 1981) provided:

"WHEREAS, during the course of its sunset audits the legislative audit committee noted that licensees of several professions are required to register their licenses with the county clerk and recorder; and

WHEREAS, all such licensees are licensed by the state and county registration serves no public purpose.

THEREFORE, it is the intent of this bill to delete county registration requirements for members of various professions."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of podiatry examiners, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607.

37-6-306 through 37-6-310 reserved.

37-6-311. Refusal or revocation of license. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license for any of the following causes:

(a) fraudulent representation in obtaining the license;

(b) incompetency in practice;

(c) use of untruthful or improbable statements to patients or in advertisements;

(d) habitual intoxication;

(e) unprofessional and immoral conduct; or

(f) selling or giving away alcohol or drugs for an illegal purpose.

(2) However, the board may authorize the department to grant or reissue such license after 6 months if in its judgment the act, acts, or conditions of disqualification have been remedied.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the penalty language after "this chapter" for "... and upon conviction thereof, shall be fined the sum not exceeding $1,000 or be imprisoned in the county jail not to exceed 2 years, or both".

CHAPTER 7

PHARMACY

Part 1 — General

Section

37-7-101. Definitions.
37-7-102. Practice subject to regulation.
37-7-103. Exemptions.
37-7-104. Qualifications of employee hired to assist board.

Part 2 — Board of Pharmacists

37-7-201. Organization — powers and duties.
37-7-202. Salaries and expenses of board members.
37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors.

Part 3 — Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided.
37-7-302. Examination — qualifications — fees — reciprocity.
37-7-303. Annual renewal fee.
37-7-304. Continuing education required.
37-7-305. Continuing education rules.

Sections 37-7-306 through 37-7-310 reserved.
37-7-311. Revocation of license issued to pharmacist or intern.
Sections 37-7-312 through 37-7-320 reserved.
37-7-321. Certified pharmacy license — suspension or revocation.
37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising.
37-7-323. Penalty.
37-7-324. Deposit of fees and fines.

Part 4 — Prescriptions Regulated—Poisons

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions.
37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling.
37-7-403. Poison register.
37-7-404. Revocation of license for failure to keep or falsifying record.
37-7-405. Sale of poison without recording a misdemeanor.

Part 5 — Drug Product Selection

37-7-501. Short title.
37-7-502. Definitions.
37-7-503. Rulemaking.
37-7-504. General prohibition of drug substitution.
37-7-505. Product selection permitted — limitation.
37-7-506. Notice to purchaser.
37-7-507. Savings passed on.
37-7-508. Product selection not practice of medicine.
37-7-509. Limitations on liability.
37-7-510. Penalty.

Part 1

General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacists provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph."

(11) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (5) and (11); changed internal references to the department and the board.

Chapter 379 deleted a reference to the official Homeopathic Pharmacopoeia of the United States from (6)(i); substituted "under the supervision of a registered and licensed pharmacist" for "in a pharmacy having a pharmacist in charge" at the end of (7); deleted the reference to drugstore in the definition of pharmacy in (11); inserted "requiring a prescription" after "drugs" in (11); deleted "at retail" from the end of (11).

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he considers proper in the treatment of such patient;

(2) nothing herein prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing herein prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing herein applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.

Part 2

Board of Pharmacists

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; and

(c) issue certificates of "certified pharmacy" under this chapter.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and drugstore" from the end of (2)(b); and made minor changes in phraseology.

Statement of Intent: The statement of intent adopted with Ch. 291, L. 1979, codified as 45-9-108, provided: "A statement of intent is required for this bill in that in section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "$25 a day as" after "receive"; deleted "for the performance of his services as a board member" after "compensation"; deleted "shall be compensated in addition thereto for" before "travel expenses"; substituted "37-1-103" for "2-18-501 through 2-18-503, in attending meetings"; and made minor changes in punctuation.

Board Compensation and Travel Expenses — Preamble and Title: The title and preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the compiler's comments under 37-1-133.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department,

and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist, intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: **En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.**

Part 3

Licensing

37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It is unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

(2) It is unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department, under the supervision of a registered and licensed pharmacist.

(3) It is unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It is unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: **En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "registered and licensed by the department, under the supervision of a registered and licensed pharmacist" for "in the temporary absence of such pharmacist" at the end of (2); inserted "under the supervision of a licensed and registered pharmacist" after "registered intern" in (4).

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination. On again making payment of the fee, an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy accredited by the American council on pharmaceutical education; but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 341 deleted "a citizen of the United States" after "applicant shall be" near the beginning of (3).

Chapter 345 substituted "The fee for registration by reciprocity shall be prescribed by the board" for "The fee for registration by reciprocity is $200" in former subsection (3) — now at the end of (4).

Chapter 379 moved the language in former (3), which provided a fee for registration by reciprocity to the end of (4); substituted the requirement that applicants be graduates of schools accredited by the council on pharmaceutical education for the requirement that the schools be recognized and approved or a member of the association of colleges of pharmacy in (3); deleted "During this period, if the applicant has passed the examination, he shall be licensed as an intern only." from the end of (3); deleted "If the holder is entitled to manage or conduct a pharamacy in this state for himself or another, the fact shall be set forth in the certificate." from the end of (5).

Coordination With Senate Bill 412: Section 16, Ch. 379, L. 1981, provided: "If Senate Bill 412 introduced in the 47th legislature is passed and approved that portion of section 6, or any other section of this bill, that amends 37-7-302, to provide for a fee for registration by reciprocity is void and of no effect." SB 412 was approved April 15, 1981. As required by this instruction "The fee for registration by reciprocity shall be prescribed by the board." was substituted in codification for the sentence "The fee for registration by reciprocity is $200." as amended into 37-7-302(4). (Note that such replacement sentence was taken from the amendment to former subsection (3) of 37-7-302 by Sec. 15, Ch. 345, L. 1981 (SB 412).)

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Preamble: The preamble to Ch. 341, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter.

History: **En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 345 substituted "registration fee prescribed by the board" for "registration fee of $15" at the end of the first sentence of (1); substituted "increases the renewal fee as prescribed by the board" for "increases the renewal fee to $30" at the end of the second sentence of (1); and deleted "of up to $10" after "an additional fee" in (2).

Chapter 379 deleted "for a period of 30 days" after "renewal fee" in the middle of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-304. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education programs and may include home study courses, examinations, or any other program prescribed by the board.

History: **En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.**

37-7-305. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter, including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: **En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.**

37-7-306 through 37-7-310 reserved.

37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the pharmacy law; or

(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: **En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 362 deleted former subsection (3) that read "has been convicted of a felony".

Chapter 379 deleted "temporarily or permanently" after "revoke" in the first sentence of the section.

Effective Date: Section 6, Ch. 362, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license — suspension or revocation. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, United States Code);

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "an annual fee prescribed by the board" for "an annual fee of $10" near the beginning of former subsection (1); substituted "fee prescribed by the board" for "fee of $100" in the second sentence of (1); deleted "in an amount not to exceed $50" after "board" in the fourth sentence of (1); and substituted "increase the renewal fee as prescribed by the board" for "increase the renewal fee to the sum of $100" in the fifth sentence of (1).

Chapter 362 deleted former subsection (1) relating to the licensing of stores other than pharmacies; deleted "store or" before "pharmacy" in (2) and (2)(e); deleted "(ii) a felony; or" from (2)(c); made minor changes in phraseology.

Chapter 379 deleted the last sentence of former subsection (1); deleted "or registered interns" after "registered pharmacists" near the middle of (1); deleted "for a period of 30 days" after "payment of such renewal fee" in the fifth sentence of (1); substituted a citation to the U.S. Code for a citation to the U.S. Statutes at Large in (2)(c)(ii); and deleted "or intern" after "pharmacist" in (2)(d).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Effective Date: Section 6, Ch. 362, L. 1981, provided: "This act is effective on passage and approval." Approved April 14, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

37-7-323. Penalty. Any person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof convicted shall automatically lose any license issued by the board.

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526.

37-7-324. Deposit of fees and fines. Fines paid under this chapter and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527.**

Part 4

Prescriptions Regulated — Poisons

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It shall be unlawful for any physician to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of such patients.

(2) A prescription must be so written that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. No narcotic prescription may be refilled.

History: **En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted prohibitory language on refills of prescriptions not having refill instructions for permissive language in subsection (3). Restricted refills to 3 years from the date originally filled.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: **En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.**

37-7-403. Poison register. The board may by a rule require registered pharmacists to keep a poison register which may require a record of poisons sold or disposed of, the signature of the purchaser, and other information required by the board. The board may provide by rule what are poisons.

History: **En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.**

37-7-404. Revocation of license for failure to keep or falsifying record. If a pharmacist sells or disposes of poison without keeping a record of it, keeps a false record of it, permits the sale or disposal of it without keeping a record, or otherwise violates rules made by the board, the board may revoke the license of the pharmacist.

History: **En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.**

37-7-405. Sale of poison without recording a misdemeanor. The sale or disposal of any poison by any registered pharmacist without keeping a record thereof in a poison register shall constitute a misdemeanor.

History: **En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.**

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: **En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.**

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/National Formulary.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981.

Compiler's Comments

1981 Amendment: Substituted a reference to the National Formulary for the Homeopathic Pharmacopoeia in (6); and made minor changes in phraseology.

37-7-503. Rulemaking. The board of pharmacists may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacists considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacists. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacists.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536.

CHAPTER 8

NURSING

Part 1 — General

Section

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Part 1

General

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1844.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures leading to predictable outcomes in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college.

History: En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 completely rewrote this section. For former text, see sec. 1. Ch. 180, L. 1975.

Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "nursing education programs" for "schools of nursing or approved courses or by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following their graduation" in (1)(d).

Part 2

Board of Nursing

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint

additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "under each administration" following "its acts" in (1).

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for this.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter, and the board may fix reasonable fees for incidental services, all within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) The board of nursing may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse, which additional education is obtained in courses offered in a university setting or its equivalent and certified by the American nurses' association. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewritten. For former text, see sec. 2, Ch. 180, L. 1975.

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. Section 7 allows the board of nursing to approve certain programs related to registration and licensure and the section also permits the board to define the educational requirements and other qualifications applicable to specialty areas of nursing. It is the intent of the legislature that the rules adopted by the board pursuant to these delegations of rulemaking power be sufficient to ensure the competency of those practicing nursing in Montana. Program approval rules are intended to be as described in the following paragraph. Rules concerning specialty areas should address the overall nature of the required courses, the approval of such courses through American Nurses' Association certification or by other means, and the prohibition of the use of a title indicating a nursing specialty by a person not approved by the board as such a specialist. . . ."

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "receive compensation" for "be paid mileage"; and substituted "37-1-133" for "2-18-501 through 2-18-503 and, in addition, $25 per day for each day actually engaged in the discharge of duties under this chapter, including the time spent in actual attendance at a meeting of the board and in direct travel to and from meetings and a reasonable number of days for the preparation and administration of examinations".

Board Compensation and Travel Expenses — Preamble and Title: The title and preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-8-204. Qualifications of secretary. Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:

(1) a citizen of the United States;

(2) a graduate of an approved school of nursing;

(3) a holder of at least a master's degree with postgraduate courses in nursing;

(4) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "shall first be approved by the board and" before "shall be" at the end of the introductory clause.

Part 3

Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "nursing education program in the state" for "school of professional or practical nursing" in the first sentence; substituted the language following "submit evidence that" for former subsections (1) and (2) that required evidence that a nursing school "is prepared to carry out the prescribed basic professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and it is prepared to meet other standards established by this law and by the board".

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Section 8 grants the Board authority to adopt rules relating to the conduct of nursing education programs. It is the intent of the Legislature that the rules adopted relate directly toward the nursing education programs insuring that the qualifications of a professional nurse or a practical nurse are adequate in the areas of services to be provided specified in section 4. . . ."

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Completely rewritten. Former section read: "Schools of nursing — survey and approval. (1) A survey of the school and institution or institutions with which the school is to be affiliated shall be made by the department, which shall submit a detailed written report of the survey to the board. If, in the opinion of the board, the requirements for an approved school of nursing (professional or practical) are met, it shall approve the school as an approved school of nursing.

(2) When the board determines that an approved school of nursing is not maintaining the standards required by law and by the board, notice in writing specifying the defect shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board within a reasonable time shall be removed from the list of approved schools of nursing."

Part 4

Licensing

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board, acting under the professional nursing administration, prescribes.

History: **En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227.**

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: **En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 248 completely rewrote the section. Former section read: "Professional nursing — examination — fee. An applicant for a license to practice professional nursing is required to pass a written examination in subjects the board, acting under the professional nursing administration, determines. A written examination may be supplemented by an oral or practical examination. On successfully passing the examination, the department shall issue to the applicant a license to practice nursing as a registered professional nurse. The applicant shall pay a fee of $35 at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or if the examination is not taken, subject to deduction by the department of $1 per subject of the examination which shall be retained by the department."

Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the fourth sentence of the former section; and substituted "subject to deduction by the department of an amount prescribed by the board" for "subject to deduction by the department of $1" near the end of the last sentence of the former section.

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Sections 10 and 14 grant rulemaking authority to the Board to establish passing scores for the professional and practical nurse examinations and establish requirements for rewriting the examination. It is the intent of the Legislature that the examination scores established be such as to insure the competency of applicants for licensure to protect the public health. Rules for rewriting the examination must provide assurance that the competency is as great as for applicants passing a first examination. . . ."

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

Composite Section: The amendment by Ch. 345, L. 1981, substituting fee-setting authority in the board for statutory application fee amounts was not codified because Ch. 248, L. 1981, amended this section by deleting all reference to application fees.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-407. Endorsement — professional nursing. The board may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee prescribed by the board at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 deleted "—professional nursing administration" after "board" at the beginning of the section; deleted former subsections (2) and (3). For former text of these subsections, see sec. 1, Ch. 215, L. 1975 (66-1228(2)(3)).

Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" at the beginning of the second sentence; and substituted "subject to deduction of an amount prescribed by the board" for "subject to deduction of $5" near the end.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.

37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "—professional nursing administration" after "board" in (1) and at the beginning of (2).

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: **En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "board" for "department" in the first sentence of the section; substituted language in (2) for "has successfully completed the prescribed curriculum in an approved school of practical nursing and holds a diploma or certificate therefrom"; deleted "acting under the practical nursing administration" after "board" in (3); added "in its rules" at the end of (3).

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: **En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "acting under the practical nursing administration" after "board" in the first sentence; inserted the third and fourth sentences; substituted "board" for "department" in the last sentence.

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Sections 10 and 14 grant rulemaking authority to the Board to establish passing scores for the professional and practical nurse examinations and establish requirements for rewriting the examination. It is the intent of the Legislature that the examination scores established be such as to insure the competency of applicants for licensure to protect the public health. Rules for rewriting the examination must provide assurance that the competency is as great as for applicants passing a first examination. . . ."

37-8-417. Endorsement — licensed practical nursing. The board may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the board, the applicant meets the requirements for practical nurses in this state.

History: **En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "—practical nursing administration" after "board" at the beginning of the section; substituted "board" for "practical nursing administration" in the last sentence; deleted former subsection (2) that read: "(2) An applicant may, pending licensure as a practical nurse under subsection (1) of this section, practice practical nursing as an employee of a health care agency for a period of not longer than 3 months from the date the department acknowledges receiving from the practical nurse a completed statement, on a form provided by the department, of intention to practice. The statement shall consist of an affidavit by the practical nurse and an affidavit by the employer where the practical nurse intends to practice practical nursing. The affidavit of the nurse and the affidavit of the employer shall contain the information considered by the board necessary for the statement. This subsection does not permit the nurse to practice for more than a 3-month period or in any event after being notified by the board through the department that the application for a license has been denied or in all cases after being notified by the board through the department to cease and desist this practice. Notice shall be given by registered or certified mail to the address of the applicant as it appears in the statement of application."

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee prescribed by the board to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $35" near the beginning of the section; and substituted "subject to a deduction of an amount prescribed by the board" for "subject to a deduction of $5" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420 through 37-8-429 reserved.

37-8-430. Temporary work permit. (1) The board may issue a temporary work permit for a period not to exceed 90 days to a registered professional nurse or licensed practical nurse who is currently licensed in another state, a territory of the United States, or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable.

(2) The board may issue a temporary work permit to a graduate of an approved nursing education program or approved practical nursing education program pending the results of the first licensing examination following graduation. Such permit is not renewable.

(3) To protect the public, the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist, or registered nurse until a license is issued and shall include a definition of supervision.

History: En. Sec. 19, Ch. 248, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and

19. . . . Section 19 allows the Board to grant temporary work permits. It is the intent of the Legislature that such permits be strictly controlled and that permittees work under the direct supervision of a physician, dentist, osteopath, podiatrist, or professional nurse. The Board shall specifically define "direct supervision"."

Codification Instruction: Section 20, Ch. 248, L. 1981, provided: "Section 19 is intended to be codified as an integral part of Title 37, chapter 8, and the provisions of Title 37, chapter 8, apply to section 19."

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the earmarked revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by January 1 as required in subsection (1).

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 248 added subsection (5).

Chapter 345 substituted "a renewal fee prescribed by the board" for "a renewal fee of $10" near the end of (1).

Fees Prescribed by Board — Statement of Intent and Preamble:

Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

The statement of intent attached to SB 427 (Ch. 248, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Board of Nursing in sections 7, 8, 10, 14, 16, and 19. . . . Section 16 authorizes the Board to establish a late renewal fee. It is the intent of the Legislature that such fee be sufficient to cover the additional expense incurred in processing late renewals. . . ."

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237.

37-8-433 through 37-8-440 reserved.

37-8-441. Denial, revocation, or suspension of license — grounds. Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct;

(6) has willfully or repeatedly violated this chapter.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "acting under the appropriate administration" after "board" near the beginning of the section; deleted former subsection (2) that read "is guilty of a crime or gross immorality".

Effective Date: Section 21, Ch. 248, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

37-8-442. Denial, revocation, or suspension of license — procedure. (1) On filing a sworn complaint in writing with the board charging a person with violation of 37-8-441 as a ground for disciplinary action, the board shall fix a time and place for a public hearing before the board.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "to be convened in membership as the five-member board for professional nurses or as the eight-member board for practical nurses, depending on the professional or practical status of the licensee, nurse, or person against whom complaint is made" at the end of (1).

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

Section

37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.
37-9-303. Admission of licensees from other states.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
Sections 37-9-307 through 37-9-310 reserved.
37-9-311. Revocation and suspension.
37-9-312. Violation.

Part 1

General

37-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether his functions and duties are shared with one or more individuals.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

History: En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Part 2

Board of Nursing Home Administrators

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted (2) for "(2) As compensation for his services each member shall receive $25 a day, in addition to expenses, for each day of actual service in the performance of his duties. All members shall be allowed travel expenses as provided for in 2-18-501 through 2-18-503 and living expenses as may be approved by the board".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part).

Part 3

Licensing

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent;

(b) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration, or has presented evidence satisfactory to the board of sufficient education, training, or experience in the foregoing fields to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part).

37-9-303. Admission of licensees from other states. The department may issue, at the board's discretion, a nursing home administrator's license without examination to a person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall be required to pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall be required to pay a license fee in an amount to be fixed by the board. A license shall expire on December 31 in the year for which it is issued and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire on December 31 in the year for which it is issued and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be fixed by the board.

History: **En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "shall be required to pay a fee prescribed by the board" for "shall be required to pay a fee of $25" in (1); deleted ", not to exceed $100" after "an amount to be fixed by the board" at the end of the first sentence of (2); substituted "a registration fee in the amount fixed by the board" for "a registration fee in the amount of not more than $25" at the end of the first sentence of (3); and substituted "The fee for issuing a duplicate license shall be fixed by the board" for "The fee for issuing a duplicate license shall be $10" in (4).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration of his currently valid registration and license on December 31. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: **En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110.**

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: **En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106.**

37-9-307 through 37-9-310 reserved.

37-9-311. Revocation and suspension. (1) The board shall, on receipt of a written and signed complaint, initiate an investigation of the matter contained in the complaint, subject to 37-1-101 and 37-1-121. At its next meeting, the complaint shall be presented to the board, together with the report of investigation and recommendations, and on this basis the board shall determine whether to bring charges and provide for a hearing.

(2) The board shall, for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards set pursuant to 37-9-203(1). The board may in its discretion defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed resulting in the closure of a long-term care facility.

(3) Denial of issuance or renewal, suspension, or revocation under this chapter is subject to review by the board on the timely written request for review within 30 days.

History: **(1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).**

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.**

CHAPTER 10

OPTOMETRY

Part 1 — General

Section

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Part 3 — Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction.
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37-10-308. Continuing education required for license renewal.
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37-10-311. Revocation — unprofessional conduct.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Part 1

General

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery.

(2) Nothing in subsection (1) allows optometrists to treat diseases of the eye.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometrists provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (3)(b); changed internal references to the department and the board.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.

37-10-103. Use of diagnostic drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist for examination purposes as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2.

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.

Part 2

Board of Optometrists

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place designated by the president, on the fourth Monday of July and, in addition, whenever and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

History: En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language in (1) after "board" for "may receive as compensation the sum of $25 and travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary

restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 66 deleted "and filed it or a certified copy with the county clerk and recorder of the county of his residence" from (1)(a).

Chapter 543 inserted (1)(i)(ii); deleted subsection relating to advertising at a price or stated terms of a price or as being free, examination or treatment of the eyes, furnishing of optometrical services, or furnishing lenses; and inserted "measure, fit, or" in (1)(k).

Preamble: The preamble to SB 307 (Ch. 66, L. 1981) provided:

"WHEREAS, during the course of its sunset audits the legislative audit committee noted that licensees of several professions are required to register their licenses with the county clerk and recorder; and

WHEREAS, all such licensees are licensed by the state and county registration serves no public purpose.

THEREFORE, it is the intent of this bill to delete county registration requirements for members of various professions."

Effective Date: Section 6, Ch. 543, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Legislative Audit Committee Bill: Chapter 543, L. 1981 (SB 426), was introduced at the request of the Legislative Audit Committee. See State of Montana Report to the Legislature, Sunset Review Board of Optometrists, 79SS-5, Legislative Auditor, 1980.

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age or older and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee prescribed by the board shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee

prescribed by the board shall receive a certificate of registration signed by the members of the board.

History: **En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments:

Chapter 341 deleted "a citizen of the United States" and inserted "or older" after "18 years of age" in (2).

Chapter 345 substituted "and a fee prescribed by the board" for "and a fee of $25" near the end of (4); and substituted "the payment of a fee prescribed by the board" for "the payment of a fee of $10" in the middle of (5).

Fees Prescribed by Board — Statement of Intent and Preamble:

Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

The preamble to SB 412 (Ch. 341, L. 1981), provided:

"WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-303. Reciprocity. If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: **En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6).**

37-10-304. Course in use of diagnostic drugs required. (1) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

History: En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.

37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall annually before July 2 of each year pay to the department a renewal fee prescribed by the board in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 ½, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a renewal fee prescribed by the board" for "a renewal fee not to exceed the sum of $50" in the first sentence; and substituted "a penalty prescribed by the board" for "a penalty of $35" at the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-308. Continuing education required for license renewal. A licensed optometrist in active practice in this state is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318.

37-10-309 and 37-10-310 reserved.

37-10-311. Revocation — unprofessional conduct. (1) The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981.

Compiler's Comments

1981 Amendment: Deleted as grounds for revocation: conviction of crime, habitual drunkenness, contagious or infectious disease, gross immorality, or gross ignorance or inefficiency in the profession; inserted as grounds for revocation: physical or mental incompetence, gross malpractice or repeated malpractice, or a violation of any of the provisions of this chapter or rules or orders of the board.

Effective Date: Section 6, Ch. 543, L.1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Legislative Audit Committee Bill: Chapter 543, L. 1981 (SB 426), was introduced at the request of the Legislative Audit Committee. See State of Montana Report to the Legislature, Sunset Review Board of Optometrists, 79SS-5, Legislative Auditor, 1980.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314.

CHAPTER 11

PHYSICAL THERAPY

Part 1 — General

Section

37-11-101. Definitions.
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Part 3 — Licensing

37-11-301. Unauthorized representation as licensed therapist.
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37-11-307. Applicants licensed in other states.
37-11-308. Annual renewal of license — fee.
37-11-309. Temporary license.
37-11-310. Foreign-trained applicants.
37-11-311. Display of license.
Sections 37-11-312 through 37-11-320 reserved.
37-11-321. Refusal to issue or renew license.
37-11-322. Penalties.

Part 1

General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental

conditions by the use of therapeutic exercise and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical therapy assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(6) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(7) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (8); changed internal references to the department and the board.

Codification: Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-102. Exemptions. This chapter shall not be construed to limit or regulate any other business or profession or any services rendered or performed in connection therewith, including osteopathy, chiropractic, chiropractic physiotherapy, massage therapists, masseurs, or Swedish masseurs.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part).

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: **En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.**

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development but not the implementation of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation procedures listed in subsection (1) may be performed by a licensed physical therapist without referral from physicians, osteopaths, dentists, or podiatrists, but treatment may be rendered only to patients referred by physicians, osteopaths, dentists, or podiatrists.

History: **En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "Physical therapy evaluation includes" for "Physical therapy is practiced under referral from physicians, osteopaths, dentists, and podiatrists and includes" at the beginning of (1); substituted "development, but not the implementation, of a plan" for "establishment and modification" in the middle of (1); added subsection (3); and made minor changes in punctuation.

Codification: Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-105. Supervision of physical therapist assistants. A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

History: **En. Sec. 6, Ch. 491, L. 1979.**

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

Part 2

Duties of Board and Department

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses twice a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent adopted with HB 571 (Ch. 491, L. 1979) provided: "House Bill 571 creates a Board of Physical Therapists. The board would be allowed rulemaking authority.

It is the intent of the legislature that any rules adopted by the board be limited to:

1. establishing minimum state requirements and educational standards for those persons practicing physical therapy in Montana;

2. assuring physicians practicing in any branch of medicine, hospitals, and employing agencies that the persons practicing physical therapy are qualified; and

3. protecting persons needing physical therapy from fraudulent physical therapists by establishing licensing requirements which ensure that only competent physical therapists practice in Montana."

37-11-202. Investigation and report of violations. (1) The board shall:

(a) investigate every alleged violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department shall be deposited in the earmarked revenue account for the use of the board, subject to 37-1-101(6). The

department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the earmarked revenue account collected after January 1, 1979, which were derived from the examination and licensure or relicensure of physical therapists in this state to the earmarked account designated as the "physical therapist account".

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language in (1) after "shall" for "be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503 for each day actually engaged in the duties of his office".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Codification: Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

Part 3

Licensing

37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979.

Compiler's Comments

Saving clause. Sec. 19, Ch. 491, L. 1979, provided: "A license to practice physical therapy issued prior to the effective date of this act remains in effect for the period of its validity but upon expiration may be renewed only in accordance with this act."

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (3)(a) for "pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist".

37-11-304. Application for examination — fee. (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by 37-11-303.

(2) He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(3) Anyone failing to pass the required examination is entitled to a second examination within 6 months.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506.

37-11-306. Issuance of license — certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this chapter. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the requirements for a license for physical therapists in the state or territory in which the applicant was licensed were at the date of his license substantially equal to the requirements in force in this state. However, the board may require a written, oral, or practical examination.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed $100," after "on the payment of the required fee" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB

412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "not to exceed $50" after "pay a fee" in the first sentence of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-309. Temporary license. (1) On payment to the department of a fee which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant must work under the direction, guidance, and observation of a licensed physical therapist. This temporary license is available to an applicant only with respect to his first application. The temporary license shall expire when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses.

History: En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted "not to exceed $100" after "On payment to the department of a fee" at the beginning of (1).

Chapter 456, in (2), substituted "The board may ... $100" for "on the submission of a written application on forms provided by it, the department shall", inserted the second sentence, substituted the last sentence for "for a license under 37-11-307, or to a foreign trained physical therapist, and the license expires when the board makes a final determination with respect to the application"; and added subsections (3) and (4).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

The statement of intent attached to HB 701 (Ch. 456, L. 1981), provided: "A statement of intent is required for this bill because rulemaking authority for the issuance of a temporary license is given in Section 6 [37-11-309]. The Board may adopt necessary and reasonable rules to govern the procedure for the application for and the issuance of a temporary license. The license shall be issued for a period not to exceed 1 year as provided in Section 2(1) [37-11-309(1)] or until the board makes a final determination on the applicant's examination scores as provided in Section 2(2) [37-11-309(2)].

First adopted by the Senate Public Health, Welfare, and Safety Committee on the 25th day of March 1981." The reference to section 6 was rendered erroneous when the bill was amended during the legislative process and bill section numbers were changed. The reference should be to section 2, which corresponds to 37-11-309."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by the board. The board will compare the applicant's transcript to the standards set by the American physical therapy association. If the applicant's professional education credit hours are approved by the board and the school the applicant attended was approved by the American physical therapy association at the time the applicant attended, the applicant is eligible for a temporary license prior to examination.

History: En. Sec. 16, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

Compiler's Comments

Codification. Subsection 2, sec. 20, Ch. 491, L. 1979, provided: "Sections 4 through 6, 10, 16, and 18 are intended to be codified as an integral part of Title 37, chapter 11, and the provisions contained in Title 37, chapter 11, apply to sections 4 through 6, 10, 16, and 18."

37-11-312 through 37-11-320 reserved.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy beyond the scope and limitation of his training and education.

History: En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

Section

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Temporary permit.
37-12-304. Examinations — subjects.
37-12-305. Licensing chiropractors from other states without examination.
37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.
37-12-307. Annual renewal of license — fee — continuing education required.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
Sections 37-12-310 through 37-12-320 reserved.
37-12-321. Unprofessional conduct.
37-12-322. Revocation or suspension of license.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Part 1

General

37-12-101. Definitions — practice of chiropractic. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of chiropractors provided for in 2-15-1847.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1)(b); changed internal references to the department and the board.

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are regular physicians or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic

methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509.

Part 2

Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. Not more than four meetings may be held in any one year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal which shall be affixed to licenses issued and shall make rules necessary for the performance of its duties. It shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board which shall at all times be open to public inspection.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "$25 for each day during which they are actually engaged in the discharge of their duties plus mileage and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee prescribed by the board. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $50" at the end of the first sentence of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-303. Temporary permit. When application for examination for license is filed with the department under 37-12-302, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic shall be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter and satisfactorily passes a clinical proficiency examination before the department, subject to 37-1-101.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506.

37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee prescribed by the board as herein provided.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "upon payment of the fee prescribed by the board" for "upon payment of the fee of $50" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Annual renewal of license — fee — continuing education required. A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 155 deleted the course description following "postgraduate educational program for chiropractors" and deleted the last sentence pertaining to renewal of licenses without attending the continuing education programs.

Chapter 345 deleted "of not more than $50," after "on payment of a renewal fee" in the first sentence of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

The preamble to SB 394 (Ch. 155, L. 1981) provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Chiropractors and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Chiropractors be reestablished under existing statutory authority."

Effective Date: Section 5, Ch. 155, L. 1981, provided: "This act is effective on passage and approval." Approved March 26, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2).

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2).

37-12-310 through 37-12-320 reserved.

37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1.

37-12-322. Revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation; or

(e) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

History: **En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2.**

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: **En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

Section

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37-13-303. Examination — scope — retention and inspection of examination papers — reexamination.
37-13-304. Issuance of certificate of license — license fee.
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37-13-306. Annual renewal — fee — military exemption.
37-13-307. Deposit of moneys received.
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37-13-311. Denial, suspension, or revocation of license — grounds.
37-13-312. Denial, suspension, or revocation of license — procedure.
37-13-313. Reinstatement after period of suspension.
37-13-314. Application of administrative procedures.
37-13-315. Enjoining unlawful practice.
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Part 1

General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners.

(2) "Acupuncture" means the treatment of the human body by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles.

(3) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(4) "School of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403.

37-13-104. Partial exemptions. Nothing in this chapter shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415.

Part 2

Board of Medical Examiners

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

Part 3

Licensing

37-13-301. License required for practice. No person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404.

37-13-302. Application for examination — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for examination with the secretary of the board, upon the forms and in the manner as prescribed by the board, at least 30 days before the date set by the board for the commencement of the examination. An examination fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board; and

(c) a graduate of an approved school of acupuncture or has completed a course in acupuncture approved by the board.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 341 deleted former subsection (2)(b) requiring U.S. citizenship.

Chapter 345 substituted "An examination fee prescribed by the board" for "An examination fee of $50" in the last sentence of (1).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Preamble: The preamble to Ch. 341, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-303. Examination — scope — retention and inspection of examination papers — reexamination. (1) Any applicant meeting the requirements of this chapter shall be admitted to an assembled examination to be conducted by the board. An examination shall be held at least twice a year. The examination shall be practical in character and sufficiently thorough to test the fitness of the applicant to practice acupuncture. The examination shall be in writing, insofar as the board shall deem practicable, and shall cover such subjects as prescribed in the curriculum and taught in the schools which offer courses leading to the degree of doctor of acupuncture, master of acupuncture, master acupuncturist, or their equivalent. Demonstration of the applicant's skill in the practice of acupuncture may also be required.

(2) Examination papers of any applicant shall be retained 2 years by the secretary of the board and may then be destroyed. While retained the examination papers shall be open to inspection only by board members, the applicant, or by some person appointed by the applicant to examine them or by a court of competent jurisdiction in a proceeding where the question of the contents of the papers is properly involved.

(3) Any applicant failing to pass his first examination before the board may, at any subsequent meeting of the board held for the purpose of examining candidates, if otherwise qualified, take subsequent examinations upon payment of the fee prescribed by the board for each examination.

History: **En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "upon payment of the fee prescribed by the board" for "upon payment of the fee of $25" near the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: **En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "upon the payment of a license fee prescribed by the board" for "upon the payment of a $20 license fee" in the middle of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee prescribed by the board as herein provided.

History: **En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "upon payment of the license fee prescribed by the board" for "upon payment of the license fee of $20" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed without examination upon request of the licensee. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license.

(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

(6) Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

History: En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a renewal fee prescribed by the board" for "a renewal fee of $20" at the end of the second sentence of (1); substituted "an additional fee prescribed by the board" for "an additional fee of $5" near the end of (3); and substituted "an additional fee prescribed by the board" for "an additional fee of $5" near the end of (5).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.

37-13-308 through 37-13-310 reserved.

37-13-311. Denial, suspension, or revocation of license — grounds. The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(1) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to chapter 1, part 2 of this title;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability which renders further practice dangerous;

(4) habitual drunkenness or habitual addiction to the use of a controlled substance;

(5) gross malpractice;

(6) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(7) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(8) advertising by means of knowingly false or deceptive statement;

(9) advertising, practicing, or attempting to practice under a name other than one's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(11) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

37-13-312. Denial, suspension, or revocation of license — procedure. (1) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in 37-13-311, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(2) At the time and place fixed for a hearing before the board as provided in subsection (1) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall, after consideration, adopt a resolution finding him guilty or not guilty of the matters

charged. If the board finds that the conditions referred to in 37-13-311 do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in 37-13-311 do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(3) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

37-13-313. Reinstatement after period of suspension. Upon the expiration of the term of suspension, the licensee shall be reinstated by the board provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

37-13-314. Application of administrative procedures. (1) The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by 37-13-312 and 37-13-313, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(2) Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the same as that for contested cases under the Montana Administrative Procedure Act.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: **En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.**

37-13-316. Penalty. Any person who violates any of the provisions of this chapter or the rules of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: **En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416.**

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

Section

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum.
37-14-202. Rulemaking power.

Part 3 — Licensing

37-14-301. Limitation of license authority — exemptions.
37-14-302. Qualifications.
37-14-303. Examination — application fee.
37-14-304. Licensure by endorsement.
37-14-305. Issuance of license or permit — fee.
37-14-306. Permits.
37-14-307. Duty to carry, display license or permit.
37-14-308. Issuance of other documents.
37-14-309. Replacement documents.
37-14-310. Biennial renewal — fee — reissuance of license.
37-14-311. Deposit of fees.
37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.
Sections 37-14-313 through 37-14-320 reserved.
37-14-321. Revocation or suspension of license.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Part 1

General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: **En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.**

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization to apply x-ray radiation to persons issued by the department of commerce.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies diagnostic x-ray radiation to persons.

History: **En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2) and (3); changed internal reference to the board.

Part 2

Board of Radiologic Technologists

37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall receive compensation and travel expenses as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: **En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), deleted the first sentence allowing the board to determine compensation; substituted "receive compensation and" for "be reimbursed for their"; and substituted "37-1-103" for "2-18-501 through 2-18-503, as amended, incurred while on official business of the board".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: **En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.**

Part 3

Licensing

37-14-301. Limitation of license authority — exemptions. (1) No person may apply x-ray radiation to a person unless licensed under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, chiropody, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may apply x-ray radiation to persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such examinations or treatments.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist or a permitholder under 37-14-306 may not perform any of the activities listed in this subsection.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "specific direction" for "direct supervision" before "of a person licensed" in (1)(a)(i); added subsection (3).

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "other than those qualifying under 37-14-312" after "radiologic technologist" in (1); deleted "including those qualifying under 37-14-312" after "radiologic technologist" in (2).

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $50" after "fee, established by the board" in the first sentence of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-304. Licensure by endorsement. The board may accept in lieu of its own examination a certificate of the American registry of radiologic technologists (ARRT) or a certificate, registration, or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not to exceed $50," after "fee set by the board" near the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of a physician specializing in radiology approved by the board, the capability of performing high-quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section and 37-14-305 shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions for original issuance.

(2) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(3) The board shall issue temporary permits to uncertified persons to perform x-ray examinations when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4).

37-14-307. Duty to carry, display license or permit. Each radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5).

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Biennial renewal — fee — reissuance of license. (1) Licenses expire on December 31 of the first even-numbered year following the year of their issuance and on every even-numbered year thereafter.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part).

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Revocation or suspension of license. A license or permit may be suspended for a fixed period or may be revoked, or such technologist may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical conduct, as defined by rules promulgated by the board, or has been guilty of incompetence or negligence in his activities as a radiologic technologist;

(5) has continued to perform as a radiologic technologist without obtaining a license or license renewal as required by this chapter.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in subsection (2).

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

CHAPTER 15

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

Part 1 — General

Section

37-15-101. Purpose.
37-15-102. Definitions.
37-15-103. Exemptions.

Part 2 — Board of Speech Pathologists and Audiologists

37-15-201. Meetings.
37-15-202. Powers and duties of board and department.

37-15-203. Compensation and expenses.

Part 3 — Licensing

37-15-301. License required.
37-15-302. Application forms.
37-15-303. Qualifications.
37-15-304. Examination.
37-15-305. Practice pending disposition of application — waiver — provisional license.
37-15-306. Issuance of license.
37-15-307. Application and examination fee — license fee.
37-15-308. Renewal.
37-15-309. Continuing education required for renewal.
37-15-310. Deposit of moneys received.
37-15-311. Municipal tax prohibited.
37-15-312. Department to publish list of licensees.
Sections 37-15-313 through 37-15-320 reserved.
37-15-321. Denial, suspension, or revocation of license — reinstatement.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Part 1

General

37-15-101. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech pathologists and audiologists and to help assure the availability of the highest possible quality speech pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of speech pathologists and audiologists provided for in 2-15-1849.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Speech pathologist" means one who practices speech pathology and who presents himself to the public by any title or description of services incorporating the words "speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services.

(4) "Speech pathology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed speech pathologist.

(5) "Audiologist" means a person who practices audiology and who presents himself to the public by any title or description of services incorporating the words "audiologist", "hearing clinician", "hearing therapist", or any similar title or description of services.

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of speech pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech pathology" means the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals.

(8) "Practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, or auditory function, including auditory behavior related to hearing impairment.

(9) "Association" means the Montana speech and hearing association.

(10) "ASHA" means the American speech and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

(12) "Provisionally licensed speech pathologist or audiologist" means those speech pathologists or audiologists currently practicing the profession in the state who do not meet the minimum requirements for licensure as defined in this chapter and who are eligible for provisional licensure conditioned on biennial evidence of satisfactory progress toward meeting the requirements for licensure as provided in this chapter. This provisional licensure, as defined in this chapter, may exist for no longer than 6 years from July 1, 1975, under any circumstance.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-15-103. Exemptions. (1) Nothing in this chapter shall prevent a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter shall restrict or prevent activities of a speech pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and shall not offer speech pathology or audiology services to the

public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, such persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter shall restrict activities and services of a student in speech pathology or audiology from pursuing a course of study in speech pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and no fee shall accrue directly or indirectly to the student. These persons shall be designated by the title "speech pathology (or audiology) intern", "speech pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter shall restrict a person from another state from offering speech pathology or audiology services in this state if such services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to such limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state which has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech pathology or audiology or its equivalent may offer speech pathology or audiology services in this state for no more than 30 days in any calendar year if such services are performed in cooperation with a speech pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter shall restrict any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter shall restrict any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and which are described in Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904.

Part 2

Board of Speech Pathologists and Audiologists

Part Compiler's Comments

Reestablishment: Section 1, Ch. 326, L. 1981, provided: "The board of speech pathologists and audiologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: **En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4).**

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: **En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7).**

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "travel expenses and mileage incidental to board meetings and business, as provided for in 2-18-501 through 2-18-503, as amended. Compensation may be paid each board member not otherwise compensated in the amount $25 per day when attending board meetings".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: **En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903.**

37-15-302. Application forms. Application for examination for licensing a speech pathologist or audiologist shall be made upon forms prescribed by the board.

History: **En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1).**

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: **En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part).**

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6).

37-15-305. Practice pending disposition of application — waiver — provisional license. (1) A speech pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a speech pathology or audiology nature without a valid license pending disposition of application.

(2) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated 175 clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least 1 academic year. The provisionally licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally licensed speech pathologist or audiologist at least 4 days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum, and examination requirements for licensure within 6 years after July 1, 1975. Twelve quarter hour credits of additional professional training towards licensure qualifications, or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every 2 years for renewal of provisional licensure. Provisionally licensed speech pathologists or audiologists who have not attained appropriate eligibility status within 6 years of July 1, 1975, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (5) of this section, but may work as speech pathology or audiology aides, as defined in this chapter.

(3) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(4) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech and hearing association in the area for which they are applying for a license.

(5) The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This

prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7).

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee. The amount of fees prescribed in connection with a license as a speech pathologist or audiologist shall be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "as follows, the exact fee to be" after "or audiologist shall be" in the middle of the first sentence of the section; and deleted ": (1) application and examination fee for a license, no less than $50 or more than $100; (2) license fee and renewal thereof, no less than $25 or more than $100" after "based on costs and predicted expenditures" at the end of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-15-308. Renewal. (1) Each licensed speech pathologist or audiologist shall on or before July 31 of the year of expiration of his license pay to the board the fee for the renewal of his license.

(2) Renewal will be every two years beginning on July 1 of the appropriate year.

(3) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice shall be mailed to each licensed speech pathologist or audiologist at least 1 month before the expiration of the license.

(4) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor.

(5) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(6) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(7) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any

other activity or conduct which violates the order or judgment by which the license was suspended.

(8) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(9) A person who fails to renew his license within the 4 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7).

37-15-309. Continuing education required for renewal. The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the earmarked revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2).

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8).

37-15-312. Department to publish list of licensees. Each year the department shall publish a list of all persons licensed under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8).

37-15-313 through 37-15-320 reserved.

37-15-321. Denial, suspension, or revocation of license — reinstatement. (1) The board may refuse to issue or renew a license or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct or having violated ethical standards of practice established pursuant to this chapter;

(c) violating any lawful order or rule of the board;
(d) violating any provision of this chapter.

(2) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license or may decline to issue a license when:
(a) the time for appeal has elapsed;
(b) the judgment of conviction has been affirmed on appeal;
(c) an order granting probation is made suspending the imposition of sentence.

(3) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(4) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

37-15-323. Injunction of unlawful practice. The practice of speech pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913.

CHAPTER 16

HEARING AID DISPENSERS

Part 1 — General

Section

37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

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37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

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37-16-301. Permanent place of business in state necessary — exception — records — notice.
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37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.

Part 4 — Licensing

37-16-401. License required.
37-16-402. Application — qualifications — fee.

37-16-403. Examination — time and place.
37-16-404. Examination — subject areas.
37-16-405. Trainee license.
37-16-406. Admission of licensees from other states.
37-16-407. Renewal of license — fee.
37-16-408. Deposit of fees.
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37-16-411. Revocation or suspension of license.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.

Chapter Compiler's Comment

Effective Date: Section 13, Ch. 444, L. 1981, provided: "This act is effective on passage and approval." Approved April 20, 1981.

Part 1

General

37-16-101. Declaration of policy. The selling and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objects and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License" means a regular or trainee license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of dispensing and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, or sale of hearing aids intended to compensate for hearing loss, including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Chapter 444 substituted ""License" means a regular or trainee license" for ""License" means a regular or temporary license" in (3); and inserted "and the subsequent selection of a proper ear mold" after "the making of an impression of the ear" near the end of (5).

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency or by a charitable or nonprofit organization which is primarily supported by voluntary contributions, unless they sell hearing aids.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009.

Part 2

Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Deleted the requirement in the last sentence of subsection (1) that the otolaryngologist or the audiologist must be present to constitute a quorum.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale and fitting of hearing aids in this state who is not licensed under this chapter.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Added "and supervise and administer the examination" at the end of subsection (4).

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "receive" for "$20 a day compensation when actually engaged in the discharge of his official duty and in addition shall be reimbursed for travel expense, as provided for in 2-18-501 through 2-18-503, in attending a meeting of the board in the state".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — exception — records — notice. (1) A person who obtains a license to dispense hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids.

(2) Subsection (1) of this section does not apply to persons who obtain a license as salespeople representing a licensed hearing aid dispenser.

(3) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(4) All licensed dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "trainee licenses" for "temporary license" at the end of the first sentence of subsection (3) and in the middle of the second sentence in subsection (3); and added subsection (4).

37-16-302. Sale of dispensing business. A business dispensing hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018.

37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the fitting or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature and show the name and address of his regular place of business and the number of his license, together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) Any person practicing the fitting and sale of hearing aids shall, when dealing with a person 18 years of age and under or when the aid is to be purchased with state funds, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dealer and fitter in connection with the fitting and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008.

Part 4

Licensing

37-16-401. License required. A person may not engage in the sale or practice of dispensing and fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the dispensing and fitting of hearing aids unless he holds a current regular or temporary license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007.

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school, has continuously engaged in the practice of fitting and dispensing hearing aids during the 3 years preceding the date of application, or holds a current license as an audiologist under Title 37, chapter 15;

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 substituted "shall pay a fee prescribed by the board" for "shall pay a fee of $50" in the middle of the first sentence of the section.

Chapter 444 substituted "a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board" for "a fee of $50" near the beginning of the section; deleted "or" after "an accredited high school" near the beginning of subsection (2); and added "or that he holds a current license as an audiologist under Title 37, chapter 15" to the end of subsection (2).

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in the Ch. 345 amendment because Ch. 444 contained broader language that included the Ch. 345 amendment.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB

412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-403. Examination — time and place. (1) An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

(2) The department shall, subject to 37-1-101, give examinations required to permit applicants to be examined within 30 days following the board's approval of the application for examination. Examination may be delayed on notice to the department under this section.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011.

37-16-404. Examination — subject areas. The examination provided in 37-16-403(1) shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:
(a) general principles;
(b) the decibel;
(c) hearing and speech;
(2) the human ear:
(a) external;
(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;
(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;
(b) impression;

(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change as deemed necessary by the board.

History: **En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012.**

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board, the board shall issue a trainee license which entitles the applicant to engage in a 6-month training period during which he shall:

(a) work for a period of 30 days under the direct control of a hearing aid dispenser during which the trainee may not in any way fit a hearing aid or test a customer;

(b) after the completion of the period provided for in subsection (2)(a), work for a period of 60 days during which he may do the testing necessary for proper selection and fitting of a hearing aid and make necessary impressions, but the delivery and final fitting of the hearing aid must be made by his supervisor; and

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, but while under supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 6-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) No trainee license may be issued by the board unless the applicant shows to the satisfaction of the board that he is or will be supervised and trained by a person who holds a valid license issued under this chapter.

(5) If a person who holds a trainee license does not take the next examination given after the completion of his training period, the trainee license may not be renewed except for a good cause shown to the satisfaction of the board.

(6) If a person who holds a trainee license takes and fails to pass the next examination given after the completion of his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the results of the next examination given after the dates of renewal are announced. In no event may more than two renewals be permitted. The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(7) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the trainee license and examination requirements of this chapter.

History: **En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 345 substituted "accompanied by a fee prescribed by the board" for "accompanied by a fee of $25" in the middle of (2); and substituted "The fee for renewal shall be prescribed by the board" for "The fee for renewal is $30" at the end of (6).

Chapter 444 substituted "trainee license" for "temporary license" wherever it appeared; substituted "board" for "department" wherever it appeared; substituted "a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board" for "a fee of $25" in the middle of (2); substituted the restrictions on the holder of a trainee license in (2) for "a temporary license which entitles the applicant to practice the fitting and dispensing of hearing aids for a period ending 30 days after the conclusion of the next examination after the date of issue"; inserted subsection (3); substituted "after the completion of his training period" for "after the date of issue" in the middle of (5) and near the beginning (6); substituted the last sentence of (6) for "The fee of renewal is $30"; and added subsection (7).

Composite Section: The amendments to the fee provisions in subsections (2) and (6) incorporated by Ch. 444 were codified rather than the language in the Ch. 345 amendments because Ch. 444 contained broader language that included the Ch. 345 amendments.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see Compiler's Comments at 37-1-134.

The statement of intent attached to SB 480 (Ch. 444, L. 1981) provided: "A statement of intent is required for this bill because it grants rulemaking authority to the Board of Hearing Aid Dispensers. It is the intent of Section 9 [37-16-905] that the Board adopt rules for the purpose of establishing the conditions under which a break in the training of a hearing aid dispenser would require application for a new training license."

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of fitting and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to dispense and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019.

37-16-407. Renewal of license — fee. A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. The fee shall be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is not required to submit to an examination as a condition of renewal for a 3-year period after suspension.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted ", not to exceed $80," after "a fee" in the middle of the first sentence of the section.

Chapter 444 deleted limitation that the fee may not exceed $80 in the middle of the first sentence; and inserted the second sentence.

Composite Section: The amendment to the fee provision contained in Ch. 444 was codified rather than the language in Ch. 345 amendment because Ch. 444 contained broader language than included the Ch. 345 amendment.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective Date: Section 13, Ch. 444, L. 1981, provided: "This act is effective on passage and approval." Approved April 20, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-408. Deposit of fees. Fees collected under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "by the department" after "Fees collected" at the beginning of the section; inserted "appropriations and" after "subject to" near the end of the section.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2 of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession, with fraudulent intent;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the national hearing aid society.

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other

false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(12) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(13) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(14) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

Compiler's Comments

1981 Amendment: Added "as provided under the Montana Administrative Procedure Act" at the end of the section.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the fitting or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021.

CHAPTER 17

PSYCHOLOGISTS

Part 1 — General

Section

37-17-101. Purpose.
37-17-102. Definitions.
37-17-103. Limitation of license authority.
37-17-104. Exemptions.

Part 2 — Board of Psychologists

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal.
37-17-202. Powers.

Part 3 — Licensing

37-17-301. License required.
37-17-302. Application — qualifications.
37-17-303. Examination.
37-17-304. Admission of licensees from other states.
37-17-305. Issuance of license.
37-17-306. Annual renewal.
37-17-307. Fees — deposit of fees.
37-17-308. Department to publish list of licensees.
Sections 37-17-309 and 37-17-310 reserved.
37-17-311. Denial or revocation of license — grounds — notice and hearing.
37-17-312. Penalty.
37-17-313. Injunction for unlawful practice.

Part 1

General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.

37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public for compensation or fee.

(5) "Practice of psychology" means the application, while representing oneself to be a psychologist, of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and behavior modification, including psychotherapeutic techniques and hypnosis;

and constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions, and motivation.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (3); changed internal references to the department and the board.

Chapter 324 inserted "while representing oneself to be a psychologist" after "the application" near the beginning of (5).

Effective Date: Section 8, Ch. 324, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "and the codes of ethics of their respective professions" after "their training" in (1).

Effective Date: Section 8, Ch. 324, L. 1981, provided: "This act is effective on passage and approval." Approved April 10, 1981.

Part 2

Board of Psychologists

Part Compiler's Comments

Preamble: The preamble to Ch. 324, L. 1981, provided:

"WHEREAS, the sunset law, sections 2-8-103 and 2-8-112, MCA, terminates the Board of Psychologists and requires a performance evaluation of the Board by the Legislative Audit Committee; and

WHEREAS, as a result of the performance evaluation, the Legislative Audit Committee recommends that the Board of Psychologists be reestablished under existing statutory authority."

Reestablishment: Section 1, Ch. 324, L. 1981, provided: "The board of psychologists is reestablished for 6 years pursuant to 2-8-122 with its existing statutory authority and rules."

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: In (2), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503, as amended, incidental to board meetings".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: **(1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207.**

Part 3

Licensing

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: **En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).**

37-17-302. Application — qualifications. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) has received a doctoral degree based on a program of studies, primarily psychological in content, from an accredited college or university having an appropriate graduate program;

(e) has completed at the time of application a minimum of 2 years of experience in the practice, research, or teaching of psychology. One year of this experience shall be post doctoral.

History: **En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2).**

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2).

37-17-304. Admission of licensees from other states. A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3).

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Annual renewal. (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5).

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", $25 to $50" after "application fee" in (1)(a); deleted ", $10" after "certificate fee" in (1)(c); deleted ", $20 to $50" after "renewal fee" in (1)(d); deleted former subsection (2) which provided "The board may set the application fee and the annual renewal fee annually within the above limits"; and deleted former subsection (3) which provided "The initial certificate fee shall be prorated as follows:

(a) if the certificate is issued between January 2 and March 31, $10;

(b) if the certificate is issued between April 1 and June 30, $7.50;

(c) . if the certificate is issued between July 1 and September 30, $5;

(d) if the certificate is issued between October 1 and January 1, $2.50."

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6).

37-17-309 and 37-17-310 reserved.

37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) A license applied for or issued under this chapter may be refused or revoked by the board on proof that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the code of ethics adopted by the board.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (1)(a) that read "has been convicted of a felony"; substituted "adopted by the board" for "published by the American psychological association" at the end of (1)(c).

Statement of Intent: The statement of intent attached to SB 397 (Ch. 324, L. 1981) provided: "A Statement of Intent is required for this bill because it delegates rulemaking authority to the Board of Psychologists in section 7 [37-17-311].

It is the intent of this bill that the Board adopt a code of ethics to define professional and unprofessional conduct by psychologists with primary emphasis being the protection of the public. The Board may adopt the code of ethics published by the American Psychological Association, and any subsequent revisions to the code may also be adopted.

First adopted by the Senate Public Health Committee on the 18th day of February, 1981.”

Effective Date: Section 8, Ch. 324, L. 1981, provided: “This act is effective on passage and approval.” Approved April 10, 1981.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: **En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.**

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: **En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).**

CHAPTER 18

VETERINARY MEDICINE AND TECHNOLOGY

Part 1 — General

Section

37-18-101. Definitions.
37-18-102. Veterinary medicine defined.
37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.
37-18-104. Exemptions.

Part 2 — Board of Veterinarians

37-18-201. Organization — meetings.
37-18-202. Powers of board and department — examinations — prosecutions.
37-18-203. Compensation and expenses of members — department records of board proceedings and licensees.

Part 3 — Licensing—Veterinary Medicine

37-18-301. License required.
37-18-302. Application — qualification — fee.
37-18-303. Examination — temporary permit pending examination.
37-18-304. Reciprocity.
37-18-305. License — issuance and contents.
37-18-306. Display of license and certificate.
37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel.
37-18-308. Deposit of money.
Sections 37-18-309 and 37-18-310 reserved.
37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.

Part 4 — Licensing—Veterinary Technology

(Repealed. Sec. 7, Ch. 96, L. 1981)

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Part 1

General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinarians provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture or ova or embryo transfer on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(3), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2.

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees. However, this employment may not be contracted for or entered into except after written application for approval directed to the board and the written grant of approval by the board. This employment may not be for a period in excess of 6 months from the date of completion of the third year of study.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) This chapter does not prohibit a person from treating his own farm animals or being assisted in this treatment by his employees employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(4) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211.

Part 2

Board of Veterinarians

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum.

If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: **En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).**

37-18-202. Powers of board and department — examinations — prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, prescribe forms for application for examination and license, and prepare examinations. The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(2) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: **En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted former subsection (2), relating to issuance of veterinary technicians' licenses.

Effective Date: Section 8, Ch. 96, L. 1981, provided: "This act is effective on passage and approval." Approved March 19, 1981.

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: **En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), inserted "compensation and" after "receive", and substituted "37-1-133" for "2-18-501 through 2-18-503. In addition, each member of the board may receive compensation of $25 per day for attending board meetings".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing — Veterinary Medicine

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set annually by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "person" for "citizen of the United States" at the beginning of the section.

Preamble: The preamble to Ch. 341, L. 1981, provided: "WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

1981 Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

1979 Effective Date: Section 4, Ch. 431, L. 1979, provided: "This act is effective upon passage and approval." Approved March 31, 1979.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held when determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set annually by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: At the beginning of (2), substituted "shall be held when determined necessary by the board, but not less frequently than once each year" for "shall be held in January and June of each year".

Effective Date: Sec. 4, Ch. 431, L. 1979, provided: "This act is effective upon passage and approval." Approved March 31, 1979.

37-18-304. Reciprocity. (1) The board may make arrangement with similar boards in the several states, insofar as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state and by which licensees of the board in this state may secure credit for license issued by this board when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least 1 year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of 37-18-304 if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal and shall be signed by the president and secretary-treasurer of the board and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, or investigation under reciprocity arrangements, he has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2).

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before July 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee to be fixed annually by the board and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended an educational program approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees who secure licenses by examination during the 6 months preceding July 1 shall be granted renewals without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before July 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled the continuing educational requirements of all licensees recited above. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within 1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of

registration before July 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", not exceeding the sum of $25," after "fee to be fixed annually by the board" in the middle of the second sentence of (1); and deleted ", not in excess of $25," after "restoration fee" in the middle of the second sentence of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412) that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3).

37-18-309 and 37-18-310 reserved.

37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) immoral, unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;

(f) gross malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210.

Part 4

Licensing — Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-18-401. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-411. En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5

Remedies for Violation

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or veterinary technology" after "veterinary medicine" in two places.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(3). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or veterinary technology" after "veterinary medicine".

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

Section

37-19-101. Definitions.

Part 2 — Board of Morticians

37-19-201. Organization — compensation and expenses of members.
37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.
37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Reciprocity.
37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
Sections 37-19-308 through 37-19-310 reserved.
37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license.
37-19-312. Suspension or revocation of license — right to notice and hearing.
Sections 37-19-313 and 37-19-314 reserved.
37-19-315. Funeral costs — rules on disclosure.
37-19-316. Continuing education requirements.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license.
37-19-402. Operator's license requirement.
37-19-403. Power of board to set standards — inspection.
37-19-404. Suspension, revocation of mortuary license.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Part 1

General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of morticians provided for in 2-15-1853.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(4) "Funeral directing" includes:

(a) supervising funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) the holding out to the public that one is a funeral director or undertaker.

(5) "Mortuary science" is the profession or practice of funeral directing and embalming.

(6) A "mortician" is a person licensed under this chapter to practice mortuary science.

(7) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: **En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

Part 2

Board of Morticians

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted the second sentence for "Board members may serve for a compensation of $25 per day for attending board meetings and shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, connected with attending meetings or in the discharge of other board duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: **En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.**

Part 3

Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but may not exceed $25" after "fee shall be set by the board" at the end of the third sentence.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412) that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-302. License required for practice of mortuary science — qualifications of applicants. The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the department is prohibited. To qualify for a mortician's license, a person must:

(1) be of good moral character;

(2) have graduated from an accredited college of mortuary science and have satisfactorily completed 2 academic years at an accredited college or university or have experience considered equivalent by the board;

(3) pass an examination prescribed by the board;

(4) serve a 1-year internship under the supervision of a mortician in a licensed mortuary in Montana.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981.

Compiler's Comments

1981 Amendment: Added "or have experience considered equivalent by the board" at the end of (2).

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $75" after "fee, as set by the board" in the middle of the first sentence.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB

412) that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination, upon payment of a license fee prescribed by the board, shall be granted an intern mortician's license to practice mortuary science under the supervision of a mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a license fee prescribed by the board" for "a license fee of $3" near the beginning of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-305. Reciprocity. If a person holding a license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if a reciprocal agreement is required by the other state, it has a reciprocal agreement with Montana.

History: En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a reciprocal agreement is required by the other state, it" for "such state" after "Montana and if" near the end of the section.

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

History: En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but may not exceed $50" after "renewal fee shall be set by the board" at the end of (1); and substituted "plus a penalty prescribed by the board" for "plus a penalty of $25" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.

37-19-308 through 37-19-310 reserved.

37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license. The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(1) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(2) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(3) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(a) which does not properly protect the rights of the public;

(b) where there is any element of fraud; or

(c) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) relating to conviction of a felony.

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

37-19-312. Suspension or revocation of license — right to notice and hearing. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 398 (Ch. 378, L. 1981) provided: "A Statement of Intent is required for this bill because it delegates rulemaking authority to the Board of Morticians in sections 7 and 8.

It is the intent of this bill that the board adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming. Members of the public seeking the services of mortuaries are usually under a great deal of personal stress, and the rules adopted are intended to provide complete disclosure of costs and attendant legal requirements to protect the economic interest of members of the public.

This bill grants the board the authority to establish continuing education programs and requirements to insure maintenance of professional knowledge and competency of licensees. It is the intent of the Legislature that the continuing education programs have as their primary objective the protection of the health, safety, and welfare of the public, and that the programs not serve primarily to limit entry into the profession or occupation or to promote the personal interests of the licensees."

Codification Instruction: Section 9, Ch. 378, L. 1981, provided: "Sections 7 and 8 are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to sections 7 and 8."

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

37-19-316. Continuing education requirements. The board may establish by rule continuing education programs and continuing education requirements. Compliance with continuing education requirements may be used as a condition of continued licensure. In adopting rules and individual orders regarding continuing education, the board in its discretion:

(1) may use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) may prescribe the content, duration, and organization of courses;

(3) shall take into account the accessibility to applicants of such continuing education as it may require; and

(4) shall avoid any impediments to interstate practice that may result from differences in continuing education requirements in other states.

History: **En. Sec. 8, Ch. 378, L. 1981.**

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 398 (Ch. 378, L. 1981) provided: "A Statement of Intent is required for this bill because it delegates rulemaking authority to the Board of Morticians in sections 7 and 8.

It is the intent of this bill that the board adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming. Members of the public seeking the services of mortuaries are usually under a great deal of personal stress, and the rules adopted are intended to provide complete disclosure of costs and attendant legal requirements to protect the economic interest of members of the public.

This bill grants the board the authority to establish continuing education programs and requirements to insure maintenance of professional knowledge and competency of licensees. It is the intent of the Legislature that the continuing education programs have as their primary objective the protection of the health, safety, and welfare of the public, and that the programs not serve primarily to limit entry into the profession or occupation or to promote the personal interests of the licensees."

Codification Instruction: Section 9, Ch. 378, L. 1981, provided: "Sections 7 and 8 are intended to be codified as an integral part of Title 37, chapter 19, and the provisions of Title 37, chapter 19, apply to sections 7 and 8."

Effective Date: Section 10, Ch. 378, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981.

Part 4

Licensing of Mortuaries

37-19-401. License required — display of license. An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part).**

37-19-402. Operator's license requirement. The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4).**

37-19-403. Power of board to set standards — inspection. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments, and may inspect the premises of a mortuary establishment to determine if such rules are complied with. Such inspection or inspections shall be made at the discretion of the board and may be without notice.

(2) The board may charge the operator an inspection fee to be set at the discretion of the board.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "but not to exceed $25 per year" after "fee to be set at the discretion of the board" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-404. Suspension, revocation of mortuary license. A mortuary license may be suspended or revoked upon proof of:

(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies; or

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3).

Part 5

Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

CHAPTER 20

PHYSICIANS' ASSISTANTS

Part 1 — General

Section
37-20-101. Qualifications of supervising physician and physicians' assistants.
37-20-102. Insurance requirement.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Penalty — enforcement.

Part 2 — Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members.
37-20-202. Adoption of rules.

Part 3 — Utilization Plans

37-20-301. Utilization plan required — contents — approval.
37-20-302. Utilization plan approval fee — renewal of approval — renewal fee.
37-20-303. Exemptions from approval requirement.

Chapter Compiler's Comments

1981 Title: The title to HB 7 (Ch. 380, L. 1981) read: "An act regulating the utilization of physicians' assistants; amending section 37-3-103, MCA."

Severability: Section 11, Ch. 380, L. 1981, was a severability section.

Part 1

General

37-20-101. Qualifications of supervising physician and physicians' assistants. (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the assistant to be employed is of good character and is both mentally and physically able to perform the duties of a physician's assistant described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician's assistant in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Except as provided in subsection (3), each physician's assistant named in the utilization plan required by 37-20-301 shall:

(a) be of good character;

(b) be a graduate of a physician's assistant training program approved by the American medical association;

(c) have taken an examination recognized by the national commission on physicians' assistants and received a score satisfactory to the board;

(d) hold a current certification by the national commission on physicians' assistants; and

(e) submit to the board detailed information on the applicant's history, education, and experience and such other information as the board may require.

(3) In lieu of the requirements of subsections (2)(b), (2)(c), and (2)(d) the physician's assistant may be a graduate of an approved medical school as defined in 37-3-102 and pass an examination approved by the board.

History: En. Sec. 3, Ch. 380, L. 1981.

37-20-102. Insurance requirement. No physician's assistant may perform any service unless he has insurance from liability for his errors, omissions, or actions to the limits required by the hospital's governing authority.

History: **En. Sec. 8, Ch. 380, L. 1981.**

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician's assistant to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10.

History: **En. Sec. 10, Ch. 380, L. 1981.**

37-20-104. Penalty — enforcement. (1) Any person who employs a physician's assistant or holds himself out to be a qualified physician's assistant without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may withdraw its approval of any utilization plan previously approved which is applicable to any supervising physician or physician's assistant who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.

(3) The board may enforce the provisions of this section by the remedy of injunction.

History: **En. Sec. 5, Ch. 380, L. 1981.**

Part 2

Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members. The Montana state board of medical examiners provided for in 2-15-1841 shall administer the provisions of this chapter under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of this chapter. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under this chapter.

History: **En. Sec. 1, Ch. 380, L. 1981.**

37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately; and

(4) address other considerations pertinent to the approval of physicians' assistants utilization plans and the health care needs of the public.

History: En. Sec. 9, Ch. 380, L. 1981.

Compiler's Comments

Statement of Intent: The statement of intent attached to HB 7 (Ch. 380, L. 1981) provided: "A statement of intent is required for this bill because it delegates authority to the board of medical examiners to consider physicians' assistants utilization plans and to promulgate administrative rules in that regard.

HB 7 intends that the board of medical examiners carry out the provisions of this bill and act to provide better health care for the public. In this spirit, the bill intends for the board of medical examiners to adopt rules which will clarify the nature and limitations of the supervision of physicians' assistants by physicians. The rules adopted should address issues of direction and supervision such as proximity of the supervising physician to his assistant; the nature of the communication between the physician and the assistant, whether it must be face-to-face or whether telephone communications suffice, and under what circumstances; the questions of protocols for interaction between different health care actors, including issues of liability and the possible direction of others by physicians' assistants; and the rules adopted should give additional guidance to prospective applicants with respect to the requirements for education and experience required of physicians' assistants, the nature of a training program approved by the American medical association, and general information indicating the scope of utilization plans likely to be approved.

In addition, a rule shall be promulgated to specify that a physician may not utilize more than one physician's assistant unless he can demonstrate to the board the ability to supervise more than one assistant adequately."

Part 3

Utilization Plans

37-20-301. Utilization plan required — contents — approval. (1) No physician, office, firm, state institution, or professional service corporation may employ or make use of the services of a physician's assistant in the practice of medicine, as defined in 37-3-102, and no physician's assistant may be employed as a physician's assistant unless the assistant is supervised by a licensed physician and unless such employment or use has been approved by the Montana state board of medical examiners in a physician's assistant utilization plan.

(2) A physician's assistant utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician and the physician's assistant, as provided in 37-20-101;

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the physician's assistant and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the physician's assistant temporarily; and

(e) such other information as the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the physician's assistant are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician's assistant.

History: **En. Sec. 2, Ch. 380, L. 1981.**

37-20-302. Utilization plan approval fee — renewal of approval — renewal fee. (1) Every physician, office, firm, or professional service corporation proposing to employ a physician's assistant shall pay to the board a utilization plan approval fee in an amount set by the board, not exceeding $50. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) Approval of every physician's assistant utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of commerce shall notify each physician, office, firm, or professional corporation and physician's assistant named in a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.

(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.

(4) Fees received by the department must be deposited in the earmarked revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).

History: **En. Sec. 4, Ch. 380, L. 1981.**

Compiler's Comments

1981 Title: The title to HB 7 (Ch. 380, L. 1981) read: "An act regulating the utilization of physicians' assistants; amending section 37-3-103, MCA."

Transfer of Function: As enacted, subsection (2) referred to "the department of professional and occupational licensing". The code commissioner changed that reference to "the department of commerce" as required by sec. 3, Ch. 274, L. 1981.

37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician's assistant utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

History: **En. Sec. 6, Ch. 380, L. 1981.**

CHAPTERS 21 THROUGH 29

RESERVED

CHAPTER 30

BARBERS

Part 1 — General

Section
37-30-101. Definitions — practice of barbering.

Part 2 — Board of Barbers

37-30-201. Organization — seal — records — deposit of money.

37-30-202. Compensation of members — expenses.
37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors.

Part 3 — Licensing of Barbers

37-30-301. Certificate required.
37-30-302. Barber school curriculum approval — application for apprenticeship.
37-30-303. Apprenticeship required — application — examination.
37-30-304. Restrictions on apprentice practice.
37-30-305. Application for barber's certificate — examination.
37-30-306. Communicable disease — physician's certificate required.
37-30-307. Fees — handicapped persons exempted — other fees prohibited.
37-30-308. Display of certificate.
37-30-309. Admission of licensee from other state.

Part 4 — Licensing and Regulation of Barbershops and Schools

37-30-401. License required.
37-30-402. Application procedure — investigation and inspection — hearing — grant or refusal of license.
37-30-403. Facilities required for licensure — inspection.
37-30-404. Barber schools — operator — license fee.
Sections 37-30-405 through 37-30-410 reserved.
37-30-411. Only licensed barber eligible for barbershop license.
37-30-412. Barbershop owner's duty to monitor employees.
37-30-413. Display of price schedule.
Sections 37-30-414 through 37-30-420 reserved.
37-30-421. Display of license.
37-30-422. Maintenance of sanitary conditions.
37-30-423. Initial inspection fee — renewal.
37-30-424. Fee for advanced barber training program, clinic, or seminar.
37-30-425. Refusal, suspension, or revocation of license.

Part 5 — Remedies for Violation

37-30-501. Penalty.

Chapter Compiler's Comment

Legislative Audit Committee Bill: Chapter 544, L. 1981 (SB 452), was introduced at the request of the Legislative Audit Committee. See State of Montana Report to the Legislature, Sunset Review Board of Barbers, 79SS-11, Legislative Auditor, 1980.

Part 1

General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) An "apprentice", under this chapter, is a person who receives instruction in an approved barber school or college and from a barber authorized to practice barbering in this state.

(3) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting the hair;

(c) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(d) singeing or shampooing the hair or applying hair tonic, or dyeing the hair of male persons;

(e) applying cosmetic preparations, antiseptics, powders, oils, lotions to scalp, face, or neck.

(4) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in (1)(c); changed internal references to the department and the board.

Chapter 544 added subsection (4).

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Part 2

Board of Barbers

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407.

37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted language after "compensation" for "of $25 per day while attending board meetings plus travel expenses, as provided for in 2-18-501 through 2-18-503, incurred in attending meetings of the board".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 83 deleted a clause in (3) requiring board recommendation for hiring.

Chapter 544 changed "$30 per day" to "a salary" in (3); deleted former subsections (4) through (7) relating to establishment by the board of minimum prices for barber work in a city or town and exemption from section for students who have been enrolled less than 9 months in a barber college.

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Part 3

Licensing of Barbers

37-30-301. Certificate required. A person may not practice or attempt to practice barbering or serve or attempt to serve as a barber apprentice unless he first receives from the department a certificate of registration.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1).

37-30-302. Barber school curriculum approval — application for apprenticeship. (1) A school or college of barbering may not be approved by the board unless it teaches the curriculum of the standardized schools approved by the national education council of barber examiners.

(2) Students of schools or colleges may, after attending the schools for a period of 9 months, make application to the department for an apprenticeship card to practice barbering under the immediate personal supervision of a licensed barber for the period of 1 year.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Apprenticeship required — application — examination. (1) A person is qualified to receive a certificate of registration to practice barbering only by serving as an apprentice barber and successfully passing an examination conducted by the department, subject to 37-1-101, to determine his fitness to practice barbering.

(2) An apprentice must file with the department an application setting forth the following information:

(a) full name and age of apprentice;

(b) name and place of approved barber school;

(c) dates of attendance at approved barber school;

(d) whether the applicant received a certificate of graduation from an approved barber school; and

(e) other information the board considers necessary.

(3) An apprentice applicant must successfully pass an apprentice examination conducted by the department, subject to 37-1-101, and pay to the department the required fee. The department shall then issue an apprentice barbering card which expires 2 years from the date of examination.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4).

37-30-304. Restrictions on apprentice practice. A registered apprentice may not independently practice or engage in the practice of barbering; however, he may do the acts which constitute the practice of barbering when done under the immediate personal supervision of a registered barber.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Application for barber's certificate — examination. On completion of 3 months of apprenticeship under the immediate personal supervision of a licensed barber, an apprentice must apply to the department to take the examination for a barber's certificate of registration. An apprentice may take the examination for a barber's certificate of registration as many as three times before expiration of the apprentice card. If an apprentice fails to pass the examination for a barber's certificate of registration three times, he shall surrender the apprentice card to the department and may not be authorized to do the acts which constitute the practice of barbering.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981.

Compiler's Comments

1981 Amendment: Changed "1 year" to "3 months" near the beginning of the section.

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

37-30-306. Communicable disease — physician's certificate required. (1) A barber or barber apprentice may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber apprentice, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber apprentice, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber apprentice is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part).

37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card shall be prescribed by the board.

(2) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(3) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(4) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a 9-month course in a reputable barber college are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(5) No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The fee ... shall be prescribed by the board" for "The fee ... is $25" at the end of (1); deleted "is $20" after "registration to practice barbering" in the middle of (2); substituted "The fee ... for the issuance of the certificate shall be prescribed by the board" for "The fee ... for the ... issuance of the certificate an additional $10" at the end of (2); deleted "in an amount not to exceed $15 and" after "set by the board" in the middle of the first sentence of (3); and substituted "pay a penalty prescribed by the board" for "pay a penalty of $10" near the end of the second sentence of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412) that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

37-30-309. Admission of licensee from other state. The department may issue, at the board's discretion, a barber's license without examination to a person who holds a current license as a barber from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 544, L. 1981.

Compiler's Comments

Codification Instruction: Section 12, Ch. 544, L. 1981, provided: "Section 11 is intended to be codified as an integral part of Title 37, chapter 30, and the provisions of Title 37, chapter 30, apply to section 10 [11]."

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Part 4

Licensing and Regulation of Barbershops and Schools

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).

37-30-402. Application procedure — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop, school, or college license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop, school, or college is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9).

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop, school, or college until such time as the initial inspection is completed.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981.

Compiler's Comment

1981 Amendment: Added subsections (3) and (4).

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 10 years' continuous experience as a barber.

(2) The owner of the school or college shall first secure a permit to operate granted by the board and issued by the department, on payment of an annual license fee prescribed by the board, and shall keep the permit prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $2,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: **En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 345 substituted "an annual license fee prescribed by the board" for "an annual license fee of $50" near the end of (2).

Chapter 544 deleted former subsection (4) that prohibited barber schools and colleges from charging patrons for services.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-405 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: **En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).**

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of health and environmental sciences and the department of commerce and report to the department of commerce the name of a person practicing barbering therein who has a communicable disease.

History: **En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in two places.

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: **En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).**

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: **En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).**

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers in consultation with the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease.

History: **En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "and the department" to "in consultation with the department" after "board of barbers" in second sentence.

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses expire on July 1 of each year following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty prescribed by the board, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty prescribed by the board.

History: **En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "in an amount not to exceed $15 and" after "an annual license fee set by the board" in the middle of (1); substituted "an initial inspection fee prescribed by the board" for "an initial inspection fee of $25" near the end of (1); deleted "in an amount not to exceed $15" after "an annual license fee set by the board" at the end of (1); substituted "pay a penalty prescribed by the board" for "pay a penalty of $10" near the end of (2); and substituted "pay a penalty prescribed by the board" for "pay a penalty of $55" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: **En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "an annual license fee prescribed by the board" for "an annual license fee of $50" in the middle of the section; and substituted "a 10-day license fee prescribed by the board" for "a 10-day license fee of $15" in the middle of the section.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-425. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, either refuse to issue or renew or may suspend or revoke a barbershop or barber school or college license for any one or combination of the following causes:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-412; 37-30-413; and 37-30-421;

(2) gross malpractice or gross incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the commission of any of the offenses described in 37-30-203.

History: **En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted as cause conviction of a felony.

Effective Date: Section 13, Ch. 544, L. 1981, provided: "This act is effective on passage and approval." Approved April 29, 1981.

Part 5

Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber without first having obtained a license under this chapter or a person knowingly employing a barber who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or a person who violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410.

CHAPTER 31

COSMETOLOGY

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Part 1

General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing" and "beauty culture" and performed in so-called hairdressing and beauty shops or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and

beautification of the hair, scalp, face, arms, or hands. The practice and teaching of cosmetology shall not be construed to include:

(a) itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business; or

(b) cosmetological artists who demonstrate cosmetological skills under the auspices of the state association of cosmetology or its affiliated units, whether at meetings or in licensed cosmetological establishments.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Part 2

Board of Cosmetologists

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974;

amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board may receive as compensation for his services the sum of $25 per day for each day in actual attendance at any meeting of the board. In addition, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, necessarily incurred in the performance of official duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice or teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology for apprentices and students; and

(6) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979.

37-31-204. Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812.

Part 3

Licensing

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology;

(c) manage or operate a cosmetology shop or beauty parlor;

(d) teach in a school of cosmetology;

(e) practice manicuring;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B).

37-31-302. License required to practice, teach, or operate shop or school. (1) No person may practice or teach cosmetology without a license.

(2) No place may be used or maintained for the teaching of cosmetology for compensation except under a certificate of registration.

(3) No person may operate, manage, or conduct a beauty shop or school and teach the art or practice without a manager-operator license.

(4) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(5) No license may be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: At the end of (3), deleted the requirement that a manager-operator license not be issued unless the applicant has been engaged in or teaching the practice of cosmetology in this state for 1 year.

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

37-31-303. Application for license to practice or teach. The applicant must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board and given by the department, subject to 37-1-101. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3).

37-31-304. Qualifications of applicants for license to practice. (1) Before one may practice or teach cosmetology or a person, firm, partnership, or corporation may operate a school of cosmetology, the person, firm, partnership, or corporation must obtain a license or certificate of registration from the department.

(2) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age, a graduate of the 8th grade, and of good moral character. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board of public education.

(3) The person qualified must file with the department a written application to take the examination, accompanied by a health certificate issued by a registered, licensed physician on a form supplied by the department, and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1).

37-31-305. Qualifications of applicants for license to teach. Before an applicant may take an examination to obtain a license as a teacher of cosmetology, he must:

(1) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(2) (a) have a license to practice cosmetology issued by the department, been actively engaged as a beauty operator for 1 continuous year immediately prior to taking the examination, and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 500 hours of student teacher training; or

(b) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Changed "an operator's license" to "a license" at the beginning of (2)(a).

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

37-31-306. Reciprocity. A person who is licensed to practice cosmetology or is licensed as a manager-operator in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists or manager-operators in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or is licensed as a manager-operator" near the beginning of the first sentence; inserted "or manager-operators" near the end of the last sentence.

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture for a period of not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. The temporary licenses are not renewable.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "as an operator" after "to practice" near the middle of the first sentence.

1981 Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

1979 Effective Date: Section 2, Ch. 460, L. 1979, provided: "This act is effective on passage and approval." Approved April 5, 1979.

37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice shall be held at a place and time specified by the board at least two times a year and not more than five times a year and for teacher's license once each year. The examinations shall be conducted by the department, subject to 37-1-101. The examinations may not be confined to a specific method or system.

(2) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional teacher training at a registered school of cosmetology approved by the board.

(3) Physically handicapped persons trained for cosmetology by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required apprenticeship or training in a shop or beauty school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "a license to practice" for "operator's license" near the beginning of the first sentence of (1).

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

37-31-309 and 37-31-310 reserved.

37-31-311. School of cosmetology — certificate of registration — requirements — bond — curriculum. (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) Licenses or certificates of registration may be refused, revoked, or suspended, as provided in 37-31-331.

(4) No teacher or student teacher may be permitted to practice cosmetology on the public in a school. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(5) The board may make further rules necessary for the proper conduct of schools of cosmetology.

(6) The board shall require the person, firm, partnership, or corporation operating a school to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(7) No professional beauty shop may be operated in connection with a school of cosmetology.

(8) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8).

37-31-312. Inspection. (1) The department shall appoint one or more inspectors who are licensed to practice under this chapter, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor or school of cosmetology during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetology establishment in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 106 added subsection (4).

Chapter 345 substituted "an initial inspection fee prescribed by the board" for "an initial inspection fee of $25" at the end of (2).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a teacher's license but not actively engaged either full-time or part-time in teaching cosmetology during the preceding year may renew the license by paying the required fee. A person holding a teacher's license but not actively engaged in teaching cosmetology either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a teacher's license and not actively engaged either full-time or part-time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline. The department shall notify license and certificate holders of the expiration date of licenses and certificates not less than 30 days before the expiration date and call attention to the penalty imposed for failure to renew a license or certificate by the date of expiration.

History: **En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "a fee prescribed by the board" for "a fee of $10" at the beginning of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department in amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: **En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendments:

Chapter 106, deleted subsection (1)(e) relating to a license fee for an operator.

Chapter 345, substituted "shall be paid to the department in amounts prescribed by the board" for "shall be paid to the department not to exceed the following respective amounts prescribed by the board" in the first sentence of (1); and deleted subsections (1)(a) through (1)(n) which set maximum fees for various licenses and certificates of registration.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part).

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetological establishment or school of cosmetology to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of cosmetological establishments or schools of cosmetology;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811.

37-31-332. Suspension for contracting communicable disease. If a licensee contracts a communicable disease endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

CHAPTER 32

ELECTROLOGY

Part 1 — General

Section
37-32-101. Purpose.
37-32-102. Definitions.
37-32-103. Exemptions.

Part 2 — Board of Cosmetologists

37-32-201. Rulemaking power.

Part 3 — Licensing

37-32-301. License required.
37-32-302. Qualifications — examination — issuance of license.
37-32-303. Reciprocity.
37-32-304. Electrology salon license required.
37-32-305. Fees — renewal — deposit of moneys collected.
Sections 37-32-306 through 37-32-310 reserved.
37-32-311. Penalty.

Part 1

General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of commerce.

(4) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology as defined in this chapter shall include electrolysis and/or thermolysis. Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 274 substituted "department of commerce" for "department of professional and occupational licensing" in subsection (3).

Chapter 412 inserted "permanently" before "removing" and added "with an electrified needle" in first sentence of subsection (4); and added last sentence in subsection (4) relating to pilethermology.

37-32-103. Exemptions. Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 106, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) that read: "a person employed by a federal, state, county, city, or other political subdivision or by an educational or charitable institution from performing the work of an electrologist".

Effective Date: Section 12, Ch. 106, L. 1981, provided: "This act is effective on passage and approval." Approved March 20, 1981.

Part 2

Board of Cosmetologists

37-32-201. Rulemaking power. The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1).

Part 3

Licensing

37-32-301. License required. No person may represent himself to be an electrologist or engage in the practice of electrology unless he is licensed under this chapter.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1).

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

37-32-303. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this chapter.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

37-32-304. Electrology salon license required. The premises in which an electrologist or electrologists may practice shall be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605.

37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall be set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "an original electrologist license shall be set by the board" for "an original electrologist license shall not exceed $50 as set by the board" in the first sentence of (1); and substituted "a late renewal fee prescribed by the board" for "a late renewal fee of $10" in the second sentence of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-32-306 through 37-32-310 reserved.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).

CHAPTER 33

MASSAGE THERAPY
(Not Codified)

Chapter Compiler's Comments

Termination of Board of Massage Therapists — Chapter Not Codified: The Board of Massage Therapists was not reestablished by the 1981 Legislature, therefore it terminated on July 1, 1981, as provided by 2-8-103. The Board of Massage Therapists was charged with the administration of this chapter. With the Board terminated, this chapter, although not repealed, became obsolete and is therefore not codified.

Histories of Not Codified Sections: The histories of the sections of Title 37, chapter 33, are:

37-33-101. En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-201. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

37-33-301. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-311. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

CHAPTERS 34 THROUGH 39

RESERVED

CHAPTER 40

SANITARIANS

Part 1 — General

Section
37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Chairman — meetings.
37-40-202. Compensation — expenses.
37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Licensing sanitarians from other states.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Prior registration as sanitarian still valid.
37-40-307. Sanitarian practicing prior to effective date.
Sections 37-40-308 through 37-40-310 reserved.
37-40-311. Suspension or revocation of license.
37-40-312. Penalty.

Part 1

General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Registered sanitarian" means a sanitarian licensed under this chapter.

(4) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational, or enforcement duties in the field of environmental sanitation.

History: En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-40-102. Exemptions. Persons exempt from the requirements of this chapter, unless practicing the profession of sanitarian, are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116; and

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment.

History: **En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6).**

Part 2

Board of Sanitarians

37-40-201. Chairman — meetings. The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times a year.

History: **En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2).**

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted section for "Members of the board shall receive compensation of $25 a day plus travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, while engaged in business of the board".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-40-203. Rulemaking power. (1) The board may adopt rules consistent with this chapter for its administration.

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: **En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3).**

Part 3

Licensing

37-40-301. License required. A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this chapter.

History: **En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411.**

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass an examination given at a time and place set by the board.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates shall be entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college" for "meet minimum standards set by the board" in (2); deleted "but not to exceed 1 year past the date of issuance of the probationary certificate described in subsection (3) below" at the end of (2); deleted subsection (3).

Effective Date: Section 10, Ch. 149, L. 1981, provided: "This act is effective on passage and approval." Approved March 21, 1981.

37-40-303. Licensing sanitarians from other states. The department shall issue a license without examination to a person who applies to the department, pays a fee prescribed by the board, and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. 5, Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 345 substituted "pays a fee prescribed by the board" for "pays a fee of $35" in the middle of the introductory sentence.

Coordination With Senate Bill 412: Section 9, Ch. 149, L. 1981, provided: "If SB Bill 412 [Ch. 345] introduced in the 47th Legislature is passed and approved, sections 5 and 6 or other sections of this act that amend sections 37-40-303 and 37-40-304 are void and of no effect." Chapter 345 was effective October 1, 1981.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 345 deleted ", not to exceed $10" after "an annual fee set by the board" at the end of (2).

Coordination With Senate Bill 412: Section 9, Ch. 149, L. 1981, provided: "If SB Bill 412 [Ch. 345] introduced in the 47th Legislature is passed and approved, sections 5 and 6 or other sections of this act that amend sections 37-40-303 and 37-40-304 are void and of no effect." Chapter 345 was effective October 1, 1981.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-305. Deposit of fees. All fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417.**

37-40-306. Prior registration as sanitarian still valid. All persons previously registered under Chapter 174, Laws of 1959, are registered sanitarians for purposes of this chapter.

History: **En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.**

37-40-307. Sanitarian practicing prior to effective date. A person having practiced as a sanitarian, as defined by 37-40-101(5), for 1 year prior to July 1, 1981, may be registered as a sanitarian upon making application and paying the required fee.

History: **En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "1981" for "1974".

Effective Date: Section 10, Ch. 149, L. 1981, provided: "This act is effective on passage and approval." Approved March 21, 1981.

37-40-308 through 37-40-310 reserved.

37-40-311. Suspension or revocation of license. (1) The board may suspend or revoke a license for the following reasons:

(a) unprofessional conduct;

(b) fraud and deceit in obtaining a license;

(c) gross negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within 3 months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or suspend, refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

History: **En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981.**

Compiler's Comments

1981 Amendment: Redesignated subsections (1) through (4) as (1)(a) through (1)(d); added subsections (2) through (5).

Effective Date: Section 10, Ch. 149, L. 1981, provided: "This act is effective on passage and approval." Approved March 21, 1981.

37-40-312. Penalty. A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS

Part 1 — General

Section
37-41-101. License required.
37-41-102. Exemptions.
37-41-103. Rulemaking power of department.

Part 2 — Licensing

37-41-201. Application for license — form and contents.
37-41-202. Licenses — nontransferability — fees.
37-41-203. Vehicle of licensee — marking required.
37-41-204. Validation of license by local health officer.
Sections 37-41-205 through 37-41-210 reserved.
37-41-211. Denial, suspension, or revocation of license.
37-41-212. Enforcement responsibility — penalty — deposit of fines.

Part 1

General

37-41-101. License required. No person, partnership, firm, or corporation shall engage in the business of cleaning cesspools, septic tanks, or privies and disposal of waste therefrom unless licensed by the department of health and environmental sciences and the license is validated by the health officer or local sanitarian in each county where business is to be conducted.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part).

37-41-102. Exemptions. The license provisions of this chapter do not apply to any county or municipality or other local, state, or federal governmental agency which desires to clean septic tanks, cesspools, or privies publicly owned or controlled by them. However, counties and municipalities or other local, state, or federal governmental agencies shall comply with rules adopted by the department for cleaning cesspools, septic tanks, or privies and disposal of wastes from cesspools, septic tanks, or privies.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Rulemaking power of department. The department shall adopt necessary rules for carrying out the provisions of this chapter.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406.

Part 2

Licensing

37-41-201. Application for license — form and contents. Application for a license is made to the department on application forms procured from the local health officer or sanitarian in the county of applicant's residence. The application shall show:

(1) the name in full and, if a partnership, the name of each partner;

(2) place of business and the counties in which business is to be conducted;

(3) place of residence of the applicant or applicants;

(4) number of units and type of equipment to be used;

(5) a statement that the applicant will comply with rules adopted by the department under this chapter;

(6) the signature of the individual, authorized officer of the firm or corporation, or managing partner of the partnership applying.

History: En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402.

37-41-202. Licenses — nontransferability — fees. (1) Licenses issued by the department shall be titled "Montana Sanitary Licensee" and numbered consecutively beginning with the number 10. Licenses expire on December 31 of each calendar year. Licenses are not transferable.

(2) The fee for each license is $25, payable at the time of application for license. Twenty dollars of the fee shall be deposited with the county treasurer in the county of licensee residence and $5 forwarded with the application to the department. The state fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of a sanitarian to enforce this chapter. The department shall return the license to county of licensee residence for issue.

History: En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403.

37-41-203. Vehicle of licensee — marking required. Persons licensed shall paint on the side of each vehicle using the words "Montana Sanitary Licensee" and immediately under those words shall paint "License No. .... (insert number of license)". License numbers shall be at least 1½ inches high and in a distinct color contrasting with the background.

History: En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.

37-41-204. Validation of license by local health officer. Each person licensed under the provisions of this chapter who cleans a cesspool, septic tank, or privy shall secure a validation signature on the license from the local health officer or sanitarian having jurisdiction in each county in which the business will be conducted. The license shall be invalid until said validation signature is affixed. The validation signature shall be affixed only after satisfactory evidence of the applicant's:

(1) knowledge of sanitary principles, laws, and ordinances;

(2) reliability in observing sanitary laws;

(3) ability to clean the septic tank, cesspool, or privy without endangering human health or safety; and

(4) having a permanent approved disposal site or having knowledge of the restrictions on disposal site locations.

History: **En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.**

37-41-205 through 37-41-210 reserved.

37-41-211. Denial, suspension, or revocation of license. The department of health and environmental sciences may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department.

History: **En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part).**

37-41-212. Enforcement responsibility — penalty — deposit of fines. State and local health officers or sanitarians are responsible for the enforcement of this chapter. Any person who fails to comply with provisions of this chapter or orders of a health officer or sanitarian made under this chapter for the protection of human health is guilty of a misdemeanor. Upon conviction he shall be fined not more than $100, imprisoned for not more than 30 days, or both, for each offense. Fines collected shall be deposited in the general fund of the county in which the action is brought.

History: **En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408.**

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

Section

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.
37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Board of Water and Wastewater Operators

37-42-201. Meetings — examinations — compensation of members — expenses.
37-42-202. Rulemaking power.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.

37-42-307. Retention of certificate by operators who terminate employment.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
Sections 37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — rehearing by board.
37-42-322. Violation.

Part 1

General

37-42-101. Purpose. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901.

37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water and wastewater operators provided for in 2-15-2105.

(2) "Certificate" means a certificate of competency issued by the department stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state) wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and

which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

History: **En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).**

37-42-103. Exemption. Operators of plants or systems serving less than 10 families are exempt from this chapter.

History: **En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).**

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: **En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.**

Part 2

Board of Water and Wastewater Operators

37-42-201. Meetings — examinations — compensation of members — expenses. (1) Annually, when new members are appointed to the board, a chairman shall be elected at the next board meeting.

(2) The board shall hold at least one examination each year for the purpose of examining candidates for certification, at a time and place designated by the board. Those applicants whose competency is acceptable to the board shall be recommended to the department for certification.

(3) Additional meetings may be called by the chairman or on written request of four members of the board when necessary to carry out this chapter. Four members constitute a quorum.

(4) The members of the board shall receive a fee of $20 per day while in session, plus travel expenses as provided for in 2-18-501 through 2-18-503, including travel while discharging their official duties.

History: **En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3).**

37-42-202. Rulemaking power. The board shall adopt rules necessary to carry out this chapter. Before the rules are effective, they shall be approved by the department. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

History: **En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910.**

37-42-203. Duty to advise and assist department. The board shall advise and assist the department in the administration of the certification program. The board shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: **En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1).**

Part 3

Licensing

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems after considering the recommendations of the board.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: **(1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part).**

37-42-302. Unlawful to operate plant or system without certified operator. (1) It is unlawful for a person, firm, or corporation both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

History: **En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911.**

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: **En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).**

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost set forth in 37-42-308 for the filing of each application and shall not act on an application until the fee has been paid.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part).

37-42-305. Certification without examination. The board may consider for recommendation for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the board of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-201(2) and 37-42-301.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment. Operators who terminate employment may retain their certificate for 2 years, providing that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification provided appropriate proof of competency is presented to the board. Successful completion of an examination may be required at the discretion of the board.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3).

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the following schedule:

(a) class I, $20;
(b) class II, $15;
(c) class III, $10;
(d) class IV, $5;
(e) class V, $3.

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall

have his certificate suspended by the board. If the certificate remains suspended for a period of more than 30 days, it shall be revoked by the board. However, the board, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the board on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the board that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the board.

History: **En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909.**

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the board of water and wastewater operators account in the department earmarked revenue fund and shall be used to pay the expenses of the board and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: **En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part).**

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — rehearing by board. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) A person who has his certificate revoked by the department may appeal to the board for a rehearing within 10 days of notification by the department, after which time the revocation proceedings are no longer applicable and revocation of the certificate becomes final.

History: **En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2).**

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: **En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.**

CHAPTER 43

WATER WELL CONTRACTORS

Part 1 — General

Section

37-43-101. Purpose.
37-43-102. Definitions.
37-43-103. Exemptions.

Part 2 — Board of Water Well Contractors

37-43-201. Seal — employees — compensation of members.
37-43-202. Powers and duties.

Part 3 — Licensing

37-43-301. Licensed contractor to supervise all construction.
37-43-302. License required.
37-43-303. Application — fee.
37-43-304. Temporary license pending examination.
37-43-305. Examination and qualifications.
37-43-306. Bond to be required.
37-43-307. Annual renewal — fee — revocation for nonrenewal.
Sections 37-43-308 through 37-43-310 reserved.
37-43-311. Suspension and revocation of license — grounds — procedure.
37-43-312. Penalty.

Part 4 — Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensed contractor.

Part 1

General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste of groundwater resources within this state by reasonable regulation and licensing of drillers or makers of water wells in this state and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells is in the best interest of the public, and the waste of groundwater resources through inefficient or incompetent operations of drillers or makers of water wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells in this state is obtained.

History: En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602.

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of water well contractors provided for in 2-15-1862.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(4) "Water well contractor" or "contractor" means a natural person who constructs a water well on lands other than his own for compensation.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-43-103. Exemptions. This chapter does not apply to:

(1) an individual who drills a water well on land which is owned or leased by him and is used by him for farming, ranching, or agricultural purposes or as his place of abode and who obtains a permit from the board, which permit the board shall issue upon finding that the drilling is exempted under this paragraph; or

(2) an individual who performs labor or services for a licensed water well contractor in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

Part 2

Board of Water Well Contractors

37-43-201. Seal — employees — compensation of members. (1) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(2) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $20 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The state engineer, the director of environmental sanitation of the state board of health, and other employees

of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963; amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2) relating to board authority to hire staff.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board may request the department to inspect water wells drilled or being drilled, and the department has access to these at reasonable times.

(4) The board may, subject to 37-1-101 and 37-1-121, establish a program for training water well drillers or prospective water well drillers and apprentices to more effectively carry out this chapter.

(5) The rules of the board shall be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(6) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) revoke or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605.

Part 3

Licensing

37-43-301. Licensed contractor to supervise all construction. Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed contractor is placed in charge of all water well construction.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part).

37-43-302. License required. The drilling, making, or construction of water wells into the groundwater resources of this state is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. It is unlawful for any contractor, as defined in this chapter, to construct a water well without first having obtained a valid license therefor as provided for in this chapter.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979.

37-43-303. Application — fee. (1) A person desiring to engage in the drilling, making, or construction of one or more wells for underground water in this state shall first file an application with the department for a contractor's license, setting out his qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee of $100 for filing the application of a person. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(3) A license to construct water wells shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1).

37-43-304. Temporary license pending examination. A temporary water well contractor's license may be issued to a person who, by evidence satisfactory to the board, is found to possess the qualifications numbered (a) through (f) in 37-43-305(1) and who has applied for a license under this chapter. The temporary license entitles the holder to engage in the business of drilling, making, or constructing water wells until the time of the next examination given under 37-43-305. On the applicant's successfully meeting the board's requirements on examination, the temporary license shall be returned to the department and a regular license issued. If the holder of a temporary license fails, after notice of the holding of an examination, to submit himself for examination or to meet the board's requirements, the temporary license expires and shall be returned to the department for cancellation.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2).

37-43-305. Examination and qualifications. (1) Under rules pertaining to the business of drilling and contracting for drilling of water wells which the board adopts, the department shall, subject to 37-1-101(4), inquire by examination or otherwise into the qualifications of applicants for licenses to drill or make wells for the production of underground waters in this state. Examinations may be oral, written, or both. The qualifications required by the board are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of underground geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) the applicant must have completed a minimum of 1 year apprenticeship under the direct supervision of a licensed water well contractor.

(2) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 6 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608.

37-43-306. Bond to be required. The department, on issuance of a license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or in lieu thereof its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the penal sum of $1,000, conditioned that the licensee will comply with the rules of the board and reasonable requirements made by the board in connection with the drilling of an individual well.

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee of $25.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling in this state or contracting therefor, he must apply under 37-43-303 and 37-43-304. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607.

37-43-308 through 37-43-310 reserved.

37-43-311. Suspension and revocation of license — grounds — procedure. (1) A license issued under this chapter may be suspended or revoked by the board in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;
(b) for the practice of fraud or deceit in obtaining a license;
(c) for gross negligence;
(d) for incompetence;
(e) for conviction of a felony; or
(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) A person bringing the complaint has the burden of proof and must appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of 1 year.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling or making water wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613.

Part 4

Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any contractor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such contractor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612.

37-43-402. Completion of contracts by successor in interest of licensed contractor. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's rights under a contract or agreement for the drilling or making of a water well or wells, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells to the extent necessary to perform the obligations of said licensed water well contractor under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor.

History: **En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615.**

CHAPTERS 44 THROUGH 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

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Section

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37-50-334. Corporation composed of public accountants — registration.
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37-50-342. Violation.

Part 4 — Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty.
37-50-402. Privileged communications.

Part 1

General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a license to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313 provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979.

Part 2

Board of Public Accountants

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman, secretary, and treasurer from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceeding. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board while actually engaged in the duties of his office is entitled to:

(1) a mileage allowance as provided in 2-18-503;

(2) expenses as provided in 2-18-501 and 2-18-502; and

(3) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home on board business".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-50-203. Rules of the board — solicitation of advisory comments. (1) The board may adopt such rules consistent with the purposes of this chapter as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board, in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards; and

(f) rules setting forth the terms, not exceeding 2 years, and areas of experience required for certification as a certified public accountant and licensing as a licensed public accountant.

(3) At least 60 days prior to the adoption of a rule or amendment, the department shall mail copies of the proposed rule or amendment to each

holder of a certificate or license issued under 37-50-314, with a notice advising him of the proposed effective date of the rule or amendment and requesting that he submit his comments on it at least 15 days prior to the effective date. These comments are advisory only. The department's certificate of mailing to licensed accountants is conclusive proof thereof.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979.

Compiler's Comments

Existing orders and rules effective until revoked or modified. Sec. 22, Ch. 684, L. 1979, provided: "All orders and rules relating to the practice of accounting made by the board of public accountants prior to July 1, 1979, remain in effect until revoked or modified in accordance with law."

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "1. The Board may establish rules setting standards for determining a practitioner's competency in specialized fields of accounting. It is contemplated the rules should address the following:

(a) the fields of specialized practice such as auditing of financial institutions, auditing of governmental entities, estate tax planning and other fields requiring specialized knowledge;

(b) types of programs required for determining competency such as classroom instruction, seminars, homestudy, experience, examination or any combination thereof;

(c) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or educational groups;

(d) the number of hours of instruction or experience, if any, required;

(e) contents of examinations, if any, required;

(f) alternative methods of fulfilling the requirements such as intrafirm or company programs and a provision for waiver of the requirements for hardship.

The rules may not prohibit the person holding a license or certificate from practicing in any area or field of public accounting nor affect his ability to acquire annual renewal of his certificate or license.

2. The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration.

3. The Board may adopt rules prescribing continuing education for continued practice in public accounting. It is contemplated that they should address the following:

(a) types of programs required for determining knowledge and competence such as classroom instruction, seminars, homestudy, experience, examination, or any combination thereof;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, course content and endorsement by other regulatory agencies or professional or national groups;

(c) the number of hours of instruction or experience, if any, required;

(d) contents of examinations, if any, required;

(e) alternative methods of fulfilling the requirements such as intrafirm or intracompany programs or prospective programs of study;

(f) methods of monitoring and enforcement;

(g) the rules may not deny a person the ability to acquire annual renewal of his certificate or license if continuing education requirements constitute a hardship due to inaccessibility to programs or interference with an interstate practice;

(h) the rules should reflect standards for continuing education programs to ensure equal access, reasonable cost, exceptions for financial or physical hardships or impediments and reference to areas commonly and not rarely practiced by those engaged in public accounting.

4. The Board may establish rules governing partnerships and corporations practicing public accountancy. It is contemplated that the rules should address the following:

(a) the financial ability of a partnership or corporation to protect the public from damages caused by negligence or malpractice, if any;

(b) the method of establishing financial ability such as unimpaired capital, professional liability insurance, self-insurance or mutual insurance, or agreement;

(c) other areas of regulation regarding firm style, name, title, affiliations, and joint and several liability of members or shareholders are governed by existing statutory law regulating partnerships and professional corporations.

5. The Board may establish rules setting forth terms, not exceeding two years, and areas of experience for original certification or licensure. It is contemplated that the rules should address the following:

(a) the duration of experience required, not to exceed two years;

(b) the areas of experience such as private, public or governmental accounting, or accounting experience as an educator, researcher, publisher or military serviceman, or combination thereof;

(c) the rules should not discriminate between the areas of experience."

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed:

(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed;

(3) the maximum number of reexaminations for which a candidate may apply;

(4) the fees to be charged each candidate for initial examinations and special examinations, which shall be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

Compiler's Comments

Codification. Sec. 25, Ch. 684, L. 1979, provided: "Sections 21 and 22 are intended to be codified as an integral part of Title 37, chapter 50. The provisions of Title 37, chapter 50, apply to sections 21 and 22, and sections 21 and 22 apply to Title 37, chapter 50. All references in the MCA to Title 37, chapter 50, include sections 21 and 22." Section 21 of the introduced bill was amended out, and section 22 became section 21, codified as section 37-50-205, MCA. These references were overlooked in the amendatory process.

Part 3

Licensing

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant in some state and is certified under 37-50-302, 37-50-310, or 37-50-311 and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person is licensed as a licensed public accountant under this chapter, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335 or unless such person has received a certificate as a certified public accountant in some state, holds a current license issued under 37-50-314, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "his country" for "this country" in (5).

37-50-302. Certified public accountants — certification — qualifications and requirements. Certification as a certified public accountant is available to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979.

37-50-303. Public accountants — licensure — qualifications and requirements. Licensure as a public accountant is available to any person who:

(1) is a resident of this state or has a place of business in this state or, as an employee, is regularly employed in this state;

(2) is of good moral character;

(3) meets the requirements of education set forth in this chapter; and

(4) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 341 deleted former subsection (1) relating to a citizenship requirement.

Chapter 575 substituted "set forth in this chapter" for "[and experience] set forth in 37-50-305 [and 37-50-306]" in (4).

Preamble: The preamble to Ch. 341, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subsection (1) must fulfill the following additional requirements as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice.

(b) He must also pass the written examination in either accounting theory or auditing or, instead of the examination in auditing or theory, he must be the holder of a United States treasury card which is in good standing at the time of his sitting for the examination in accounting practice.

(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821.

37-50-305. Education requirements. A candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(1) with a concentration in accounting; or

(2) with a concentration other than accounting if supplemented by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "The Board may establish rules governing education requirements for certification or licensure. It is contemplated that the rules should supplement and interpret 37-50-305 as amended by the bill by:

(a) making determinations as to recognized colleges and universities. The Board may use the University System schools of business as a yardstick;

(b) determining standards for accepting college graduates with majors other than accounting, including but not limited to:

(i) the minimum number of accounting credits required;

(ii) subjects of courses allowed as supplementary business-related courses; and

(iii) the total number of credits required in business administration."

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall hold and grade a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the department is final in each case. The department may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a public accountant any person otherwise eligible therefor who is the holder of a license as a public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.

37-50-314. Annual certification or licensure. (1) Annual certificates and licenses to engage in the practice of public accounting in this state shall be issued by the department to certified public accountants and to licensed public accountants. There is an annual certificate or license renewal fee in an amount to be determined by the board. Annual certificates and licenses expire on December 31 of each year and may be renewed for a period of 1 year by certified public accountants and licensed public accountants in good standing on payment of the annual renewal fee.

(2) A person who fails to renew his license or certificate shall promptly surrender it to the board upon request.

(3) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(4) The board may in its discretion waive the requirement stated in subsection (3) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(5) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(6) Subject to subsections (4) and (5), the board may revoke, suspend, or refuse to renew the certificate or license of an applicant who fails to furnish

evidence of having met the continuing education requirements established by the board.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 489 (Ch. 684, L. 1979) provided in part: "Section 13 allows the Board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs."

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979.

37-50-316. Other license fees prohibited. No license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842.

37-50-317 through 37-50-320 reserved.

37-50-321. Revocation, suspension, or refusal to renew certificate or license. After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any license issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(1) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(2) dishonesty, fraud, or gross negligence in the practice of public accounting;

(3) violation of any of the provisions of 37-50-301;

(4) violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;

(5) conviction of a felony under the laws of any state or of the United States;

(6) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(7) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(8) suspension or revocation of the right to practice before any state or federal agency.

History: En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979.

Compiler's Comments

Correction. The Code Commissioner has inserted the reference to 37-50-303 (the pre-1979 reference) in the introductory paragraph to replace an apparently incorrect reference to section 21 of the bill enacting Ch. 684, L. 1979. That bill, as introduced, repealed 37-50-303 and replaced it with a new section 21. The Legislature amended the bill to delete the new section and the repealer of 37-50-303, but this reference was overlooked.

37-50-322. Reinstatement of certificate or license to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to issue a new certificate to a certified public accountant whose certificate has been revoked or may permit the relicensing of anyone whose license has been revoked or may reissue or modify the suspension of a license to practice public accounting which has been revoked or suspended.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837.

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: **En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.**

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a license issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a license to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: **En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979.**

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a license issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a certificate or license to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must be certified or licensed annually under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979.

37-50-336. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in 37-50-341, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: **En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.**

37-50-342. Violation. Any person who violates any provision of 37-50-301 shall be guilty of a misdemeanor.

History: **En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840.**

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: **En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.**

37-50-402. Privileged communications. Except by permission of the client or person or firm or corporation engaging him or the heirs, successors, or personal representatives of such client or person or firm or corporation and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof shall be required to nor shall he voluntarily disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. The provisions of this section shall not apply to the testimony of a public accountant given pursuant to subpoena in a court of competent jurisdiction.

History: **En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841.**

CHAPTER 51

REAL ESTATE BROKERS AND SALESMEN

Part 1 — General

Section
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37-51-102. Definitions.
37-51-103. Exemptions.

37-51-104. Chapter supplemental to deceptive practices law.

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37-51-307. Directory of licensees.
37-51-308. Broker's office — notice to department of change of address.
37-51-309. Broker owner — broker associate — salesman — notice to department of change of association.
37-51-310. Annual renewal.
37-51-311. Fees — deposit of fees.
37-51-312. No taxation by municipality.
Sections 37-51-313 through 37-51-320 reserved.
37-51-321. Revocation or suspension of license — initiation of proceedings — grounds.
37-51-322. Right to notice and hearing.
37-51-323. Penalties — criminal — civil.

Part 4 — Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of realty regulation provided for in 2-15-1867.

(2) "Broker" includes an individual who for another or for a fee, commission, or other valuable consideration or who with the intent or expectation of receiving the same negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements thereon or collects rents or attempts to collect rents or advertises or holds

himself out as engaged in any of the foregoing activities. The term "broker" also includes an individual employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition thereof at a salary or for a fee, commission, or any other consideration. The term "broker" also includes an individual who engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers, or both, and any person who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease.

(3) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(4) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(7) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(8) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(9) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (5); changed internal references to the department and the board.

37-51-103. Exemptions. A single act performed for a commission or compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this chapter, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an

auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as attorney-in-fact under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(3) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as such attorney at law;

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(8) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

Part 2

Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written

request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Compiler's Comments

Transition. Sec. 10, Ch. 497, L. 1979, provided: "All orders and rules relating to regulation of the real estate industry made by the board of real estate remain in full force and effect until revoked or modified in accordance with law by the board of realty regulation. The records and documents of the board of real estate are transferred to the board of realty regulation. Licenses, permits, and certificates issued prior to the effective date of this act remain valid under the same terms and conditions as when issued and are subject to the provisions of Title 37, chapter 51."

37-51-204. Educational programs. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive as compensation for each day actually spent on his official duties the sum of $25 and travel expenses, as provided for in 2-18-501 through 2-18-503, connected with the performance of duties for the board".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-51-206. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the earmarked revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the earmarked revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979.

Compiler's Comments

Effective date. Sec. 15, Ch. 497, L. 1979, provided: "This act is effective on passage and approval." Approved April 9, 1979.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979.

Compiler's Comments

Codification instructions. Sec. 2, Ch. 515, L. 1979, provided: "It is intended that section 1 of this act be codified as an integral part of Title 37, chapter 51, part 2, and the provisions of Title 37, chapter 51, apply to section 1 of this act."

Part 3

Licensing

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a real estate broker if every corporate officer and every partner performing the functions of a "broker", as defined in 37-51-102(2), is licensed as a broker. All officers of a corporation or all members of a partnership acting as a broker are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3).

37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement; and

(d) file an application for license with the department.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board; and

(iii) file an application for license with the department.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (2)(a) requiring U.S. citizenship.

Preamble: The preamble to Ch. 341, L. 1981, provided:

"WHEREAS, the Legislative Audit Committee in its sunset reviews determined that a few professions and occupations require citizenship as a qualification for licensure; and

WHEREAS, a number of courts, including the United States Supreme Court, have found citizenship qualifications for licensure unconstitutional.

THEREFORE, it is the intent of this act to delete citizenship requirements as a qualification for licensure by those boards presently having a citizenship requirement."

Effective Date: Section 8, Ch. 341, L. 1981, provided: "This act is effective on passage and approval." Approved April 13, 1981.

37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesman's license shall include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981.

Compiler's Comments

1981 Amendment: Deleted former subsection (4) requiring an applicant, following two failures, to wait 6 months before another reexamination.

Effective Date: Section 2, Ch. 595, L. 1981, provided: "This act is effective on passage and approval." Approved May 1, 1981.

37-51-304. Bond required for licensure of broker or salesman. No license may be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the department in the sum of $10,000 executed by a surety company authorized to do business in this state in a form approved by the board and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with this chapter and shall pay, to the extent of $10,000, judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this chapter, after approval, shall be filed and held in the office of the department. If, for any reason, the bond of a broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within 30 days from the date of suspension, the license of the broker or salesman is automatically revoked.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker with whom the real estate salesman is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker with whom he is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979.

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process. (1) It is unlawful for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter. However, this section applies only to brokers of those other states which offer the same privileges to the licensed brokers of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state and pays to the department the same license fee as is required for obtaining a broker's license in this state. The board may in its discretion refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by Title 25, chapter 2, part 1. The consent shall provide that service of summons in this action may be served on the department for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged and, if made by a corporation, shall be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936.

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979.

37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesman's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979.

37-51-310. Annual renewal. Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3).

37-51-311. Fees — deposit of fees. (1) The fees prescribed by the board shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not file a bond with the department as provided in 37-51-304.

(3) The board shall adopt a schedule of fees. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least 1 year has passed since the fee for that particular item was last increased or decreased.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "following" after "The" at the beginning of (1); inserted "prescribed by the board" after "fees" near the beginning of (1); deleted subsections (1)(a) through (1)(k) which specified the maximum fees for various licenses; substituted "change an annual fee" for "charge a $5 annual fee" in the first sentence of (2); and deleted "within the limits set by this section" after "adopt a schedule of fees" at the end of (3).

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4).

37-51-313 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979.

37-51-322. Right to notice and hearing. When the board has investigated an application for a real estate broker's or salesman's license or, subject to 37-1-101 and 37-1-121, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940.

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.

CHAPTER 52

TITLE ABSTRACTERS
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-52-101. En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

37-52-201. En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

37-52-301. En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-311. En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

37-52-401. En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTERS 53 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROLMEN

Part 1 — General

Section
37-60-101. General definitions.
37-60-102. Definition of private investigator.
37-60-103. Definition of private patrol operator.
37-60-104. Restrictions on authority of licensed private patrol operator.
37-60-105. Exemptions.

Part 2 — Director of Department

37-60-201. Duty to administer chapter.
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Part 3 — Licensing

37-60-301. License required.
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37-60-306. Denial of license — hearing.
37-60-307. Manager of a licensee.
37-60-308. Temporary operation without individual licensee.
37-60-309. Form of license.
37-60-310. Display of license.
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37-60-312. Annual renewal.
37-60-313. Fees — deposit of fees.
37-60-314. Notice to department of change of name or address.
Sections 37-60-315 through 37-60-320 reserved.
37-60-321. Suspension or revocation.

Part 4 — Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees.
37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry.
37-60-403. Licensee advertising.
37-60-404. Duty to maintain employee records.
37-60-405. Penalty.

Part 1

General

37-60-101. General definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce or his designee.

(3) "Licensee" means a person licensed under this chapter and includes but is not limited to private investigator and private patrol operator.

(4) "Manager" means the individual under whose direction, control, charge, or management the business of a licensee is operated.

(5) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

History: En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (1); substituted "director of the department of commerce or his designee" for "director of the department of professional and occupational licensing" in (2).

37-60-102. Definition of private investigator. A private investigator within the meaning of this chapter is a person other than an insurance adjuster who, for any consideration whatsoever, engages in business or accepts employment to furnish or agrees to make or makes any investigation for the purpose of obtaining information with reference to:

(1) crime or wrongs done or threatened against the United States of America or any state or territory of the United States of America;

(2) the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation, or character of any person;

(3) the location, disposition, or recovery of lost or stolen property;

(4) the cause or responsibility for fires, libels, losses, accidents, or damage or injury to persons or to property; or

(5) securing evidence to be used before any court, board, officer, or investigating committee.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).

37-60-103. Definition of private patrol operator. A private patrol operator or operator of a private patrol service within the meaning of this chapter is a person who, for any consideration whatsoever:

(1) agrees to furnish or furnishes a watchman, guard, patrolman, or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation, or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers, or property of any kind; or

(2) performs the service of such watchman, guard, patrolman, or other person for any of said purposes.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2).

37-60-104. Restrictions on authority of licensed private patrol operator. A person licensed as a private patrol operator only may not make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing enumerated in 37-60-103 which he has been hired or engaged to protect, guard, or watch.

History: En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3).

37-60-105. Exemptions. This chapter does not apply to:

(1) a person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons;

(4) a charitable, philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit;

(5) an attorney at law in performing his duties as such attorney at law;

(6) a collection agency or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof; or

(7) insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

History: En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306.

Part 2

Director of Department

37-60-201. Duty to administer chapter. The director shall administer and enforce the provisions of this chapter.

History: En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302.

37-60-202. Rulemaking power. The director may adopt and enforce reasonable rules:

(1) classifying licensees according to the type of business regulated by this chapter in which they are engaged, including but not limited to private investigators and private patrol operators, and limiting the field and scope of the operations of a licensee to those in which he is classified and qualified to engage;

(2) fixing the qualifications of licensees, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare; and

(3) carrying out generally the provisions of this chapter.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303.

Part 3

Licensing

37-60-301. License required. No person shall engage in a business regulated by this chapter unless he is licensed under this chapter, and no person shall falsely represent that he is employed by a licensee.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304.

37-60-302. Application — form. An application for a license under this chapter shall be on a form prescribed by the director and accompanied by the application fee provided by this chapter.

History: **En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307.**

37-60-303. Application — contents. An application shall be verified and shall include:

(1) the full name and business address of the applicant;

(2) the name under which the applicant intends to do business;

(3) a statement as to the general nature of the business in which the applicant intends to engage;

(4) a statement as to the classification or classifications under which the applicant desires to be qualified;

(5) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager;

(6) two recent photographs of the applicant, of a type prescribed by the director, and two classifiable sets of his fingerprints;

(7) a verified statement of his experience qualifications; and

(8) such other information, evidence, statements, or documents as may be required by the director.

History: **En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308.**

37-60-304. Qualifications of applicants. Before a license is granted, the applicant or his manager shall meet all of the following:

(1) be at least 18 years of age;

(2) be a citizen of the United States and a resident of the state of Montana;

(3) be of good moral character and temperate habits; and

(4) comply with such other qualifications concerning training, education, or experience as the director may fix by rule.

History: **En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979.**

37-60-305. Examination. The director shall require an applicant or his manager to demonstrate his qualifications by a written examination.

History: **En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310.**

37-60-306. Denial of license — hearing. If a license is denied, the applicant for such license or for renewal thereof may request a hearing within 30 days after notice of denial. Such hearing shall be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

History: **En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing".

37-60-307. Manager of a licensee. (1) The business of each licensee shall be operated under the direction, control, charge, or management in this state of either the licensee or a manager, but no licensee shall be required to employ more than one manager.

(2) No person shall act as a manager of a licensee until he has complied with each of the following:

(a) demonstrated his qualifications by a written examination, if required by the director; and

(b) made a satisfactory showing to the director that he has the qualifications prescribed by 37-60-304.

History: En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312.

37-60-308. Temporary operation without individual licensee. Where the individual on the basis of whose qualifications a license under this chapter has been obtained ceases to be connected with the licensee for any reason whatever, the business may be carried on for such temporary period and under such terms and conditions as the director shall provide by regulation.

History: En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313.

37-60-309. Form of license. The license, when issued, shall be in such form as may be determined by the director and shall include:

(1) the name of the licensee;

(2) the name under which the licensee is to operate;

(3) the number and date of the license.

History: En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314.

37-60-310. Display of license. The license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

History: En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315.

37-60-311. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as may be determined by the director shall be issued without charge to each licensee, if an individual, or if the licensee is a person other than an individual, to its manager and to each of its officers and partners, which card shall be evidence that the licensee is duly licensed. When any person to whom a card is issued terminates his position, office, or association with the licensee, the card shall be surrendered to the licensee and within 5 days thereafter shall be mailed or delivered by the licensee to the department for cancellation.

History: En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.

37-60-312. Annual renewal. Licenses issued under this chapter and the pocket cards issued pursuant thereto shall expire at 12 midnight on June 30 of each year if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

History: En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329.

37-60-313. Fees — deposit of fees. (1) The amount of fees prescribed by this chapter, unless otherwise fixed, is that fixed in the following schedule:

(a) An application for an original license in any classification shall be accompanied by an investigation fee of $25.

(b) The annual fee for an original license or renewal thereof shall be fixed by the director but shall not exceed $50.

(2) Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Notice to department of change of name or address. A licensee shall notify the department of any and all changes of his address, of the name under which he does business, and of any change in its officers or partners within 30 days after such change.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317.

37-60-315 through 37-60-320 reserved.

37-60-321. Suspension or revocation. The director may suspend or revoke a license issued under this chapter if he determines that the licensee or his manager, if an individual, or if the licensee is a person other than an individual, that any of its officers, directors, partners, or its manager has:

(1) made any false statement or given any false information in connection with an application for a license or a renewal or reinstatement of a license;

(2) violated any provisions of this chapter;

(3) violated any rule of the director adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license was expired, which would be cause for the suspension or revocation of a license or grounds for the denial of an application for a license;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties; or

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee.

History: En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327.

Part 4

Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a private investigator may use a badge in connection with the official activities of the licensee's business.

(5) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee may use a badge except while engaged in guard or patrol work and while wearing a uniform.

(6) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(7) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the department.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321.

37-60-404. Duty to maintain employee records. Each licensee shall maintain a record containing such information relative to his employees as may be prescribed by the director.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320.

37-60-405. Penalty. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by fine not to exceed $500 or by imprisonment in the county jail not to exceed 6 months or by both such fine and imprisonment.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328.

CHAPTER 61

ATTORNEYS AT LAW

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Part 1

Licensing Authorities

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court is hereby authorized and empowered to appoint five members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The court may release, dismiss, or remove any member of said board and appoint other members in his or their stead at any time.

(2) A majority of said board shall constitute a quorum and have the power to conduct examinations.

(3) The board shall perform such duties and render such assistance in the examinations of applicants as may be prescribed by the court and shall be governed and controlled by such rules as the court may prescribe. It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013.

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2

Licensing

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.

37-61-202. Who may be admitted as attorney. Any citizen or person, resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part).

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.

37-61-204. Qualifications, examination, and admission. Each applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for 2 successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may from time to time determine. However, a diploma from the university of Montana law school at Missoula or other evidence of having completed the 3-year course in law of that school entitles the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002.

37-61-205. Application fees. (1) Every applicant for admission to the bar, by examination or otherwise, must pay to the clerk of the supreme court at the time he files his application for examination or his petition for admission the sum of $25. Should the applicant fail in the examination taken by him, he may take another examination before the board at any time within 1 year thereafter without further payment. No other fee shall be exacted for admission of any applicant if admitted within 1 year after the payment of the fee of $25 hereinabove designated.

(2) All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015.

37-61-206. Certificate of admission and license. If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state and must direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

37-61-208. Admission of attorneys from other states. Every citizen of the United States or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of his or her license and satisfactory evidence of good moral character, but the court may examine the applicant as to his or her qualifications. However, any person who is a nonresident of the state of Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country may, upon motion of any attorney admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall, when so permitted, be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

37-61-209. Roll of attorneys. The clerk of the supreme court must keep a roll of the attorneys and counselors admitted to practice, which must be signed by the person admitted before he receives his license.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state shall be required to pay a license tax of $10 per annum, which tax shall be payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of such tax, the clerk shall issue and deliver a certificate to the person paying the same, certifying to the payment of said license tax and stating the period covered by said payment.

(3)No license tax shall be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.

Part 3

Disbarment and Suspension

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: **En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).**

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: **En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.**

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the subsections (2)(b), (2)(c), or (2)(d) of 37-61-301 may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: **En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.**

37-61-304. Complaints filed in office of clerk. Whenever any verified complaint is filed in the office of the clerk of the supreme court charging any attorney or counselor at law with having violated his oath as an attorney or counselor or with having otherwise been guilty of conduct authorizing or justifying his suspension from practice or disbarment, it shall be the duty of the attorney general to represent such complaint in such action or proceeding and to prosecute the same. He shall first investigate the charges made and determine whether or not a trial thereof should be had and report the results of his investigation to the justices of the supreme court. If in his judgment or in the judgment of the justices of the supreme court a trial should be had, the clerk of the supreme court shall, upon the direction of the attorney general or any justice of the supreme court, issue a summons in the form of a summons in a civil action, setting forth, in brief, the charges contained in the complaint and requiring said attorney to appear and answer said complaint within such time as the court may designate.

History: **En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.**

37-61-305. Complaints filed with attorney general or district judge. (1) Whenever any verified complaint is made in writing to the attorney general that any attorney has violated his oath or otherwise been guilty of professional misconduct or other conduct authorizing or justifying his suspension from practice or his disbarment, it shall be the duty of the attorney general to investigate the charges so made. If from such investigation, he shall determine that a complaint should be filed in the supreme court of such charges and a trial thereof had, he shall file in the office of the clerk of the supreme court a complaint against such attorney, setting forth in concise language the acts or conduct charged or complained of; whereupon, the clerk of said court shall issue a summons for the appearance and answer of the party complained of, as provided in the last preceding section. Said summons and the summons as provided for in the preceding section shall be served in the same manner as provided for the service of summons in civil actions. In making such investigations, the attorney general or the special deputy or counsel appointed to act in such matter shall have power to subpoena witnesses and require the production of books, documents, and other instruments and to administer oaths.

(2) Whenever a complaint is made in writing to any judge of a district court or to the supreme court against any attorney charging him with misconduct or other acts as in parts 1 through 3 of this chapter specified, the same shall be immediately forwarded to the attorney general, with the certificate of the clerk of such court, setting forth the time of the filing of said complaint in said court and the name and residence of the complainant and the residence and post-office address of the accused, and it shall be the duty of the attorney general thereupon to investigate such charges in the manner provided in parts 1 through 3 of this chapter.

History: **En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.**

37-61-306. Special investigator. The attorney general or the supreme court may, when deemed necessary, appoint some attorney as special counsel or deputy to investigate any such charges and to prosecute any disbarment proceedings instituted. The attorney so appointed shall be entitled to receive his necessary expenses therein and a reasonable compensation for his services to be fixed by the supreme court.

History: **En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.**

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: **En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.**

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: **En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.**

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or in any bond or recognizance for the appearance of any person or persons charged with any public offense" after "coroner" in (1); rearranged phraseology; added subsection (2).

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

CHAPTERS 62 THROUGH 64

RESERVED

CHAPTER 65

ARCHITECTURE

Part 1 — General

Section
37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects

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37-65-202. Compensation of board members — expenses.
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Part 3 — Licensing

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37-65-305. Licensing of architects from other states.
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37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
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37-65-321. Revocation of certificate — grounds — right to notice and hearing.
37-65-322. Penalty.
37-65-323. Injunction.

Part 1

General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other services in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (4); changed internal references to the department and the board.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c).

Part 2

Board of Architects

37-65-201. Organization — meetings — records. (1) The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, with the name and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board is allowed the sum of $25 per day plus mileage and travel expenses as provided for in 2-18-501 through 2-18-503, while in the discharge of his actual duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

Part 3

Licensing

37-65-301. Certificate required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "registered architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1).

37-65-302. Registration limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be registered as an architect. Only individuals shall be registered as architects, but a number of architects constituting a firm may use the collective title "architects" or "registered architects".

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a).

37-65-303. Application — examination — issuance of certificate. (1) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 498 (Ch. 388, L. 1979) provided in part: "Section 6 allows the board to modify the standard national council of architectural registration board's examination and grading procedure. It is contemplated that the board may, in its discretion, adopt rules to modify specific questions for purposes of tailoring them to the Montana situation."

37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979.

37-65-305. Licensing of architects from other states. An architect holding a valid and current license to practice in another state, territory, or country will be granted a certificate to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part).

37-65-306. Annual renewal — fee — continuing education. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(a) pay to the department a reasonable fee as prescribed by the board; and

(b) present evidence to the board of compliance with any continuing education requirements imposed by the board.

(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(i) attendance at approved classroom or seminar-type instruction programs; or

(ii) passing an examination.

(b) If classroom or seminar-type instruction is required, the board shall by rule:

(i) make determinations as to approved programs; and

(ii) prescribe the number of hours required for compliance.

(c) If an examination is required, the board shall by rule prescribe:

(i) the subjects of the examination; and

(ii) the grade required to pass the examination.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979.

Compiler's Comments

Codification. Sec. 11, Ch. 388, L. 1979, provided: "Section 9 [37-65-306(2)] is intended to be codified as an integral part of Title 37, chapter 65. The provisions of Title 37, chapter 65, apply to section 9, and section 9 applies to the provisions of Title 37, chapter 65. All references in the MCA to Title 37, chapter 65, include section 9."

Statement of intent. The statement of intent attached to SB 498 (Ch. 388, L. 1979) provided in part: "Section 8 allows the board to prescribe a reasonable annual renewal fee. It is intended that the fee not exceed an amount necessary to meet administrative costs.

Sections 8 and 9 give the board authority to adopt rules imposing continuing education requirements. The board is not required to adopt such rules. It is contemplated that such rules, if adopted, should address the following:

(a) types of programs required such as classroom instruction, seminars, examinations, or a combination thereof;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, and course content;

(c) the number of hours of instruction, if any, required;

(d) the basic content and the procedures and passing grade for any examinations required;

(e) alternative methods of fulfilling the requirements such as home study, intrafirm or intracompany group study programs or active practice for a prescribed period;

(f) standards for waiver of the requirements for hardship reasons; and

(g) methods of monitoring compliance."

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2).**

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: **En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.**

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: **En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.**

37-65-310 through 37-65-320 reserved.

37-65-321. Revocation of certificate — grounds — right to notice and hearing. (1) The board may revoke a certificate if proof satisfactory to the board is presented of the following:

(a) The certificate was obtained through fraud or misrepresentation.

(b) The holder of the certificate has been found guilty by the board or by a court of justice of fraud or deceit in his professional practice or has been convicted of a felony by a court of justice.

(c) The holder of the certificate has been by the board found guilty of gross incompetency or of recklessness in the planning or construction of buildings.

(d) The holder of the certificate has violated standards of professional conduct adopted by the board.

(2) The board may revoke a certificate if the holder of the certificate has been found guilty by the board of any of the following acts which constitute unprofessional conduct:

(a) willful departure, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(b) willful violation of the building codes of this state or a political subdivision;

(c) aiding or abetting an unlicensed person to violate or evade this chapter; or

(d) sealing or signing plans or specifications not prepared under his direct supervision and control.

(3) A certificate may not be revoked until the party holding the certificate is given notice and an opportunity for a hearing.

(4) If the board's findings and conclusions are adverse to the accused, his certificate stands revoked and annulled at the expiration of 30 days from the final decision adverse to the party.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112.

37-65-322. Penalty. Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $200 or more than $500 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1).

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

CHAPTER 66

LANDSCAPE ARCHITECTURE

Part 1 — General

Section
37-66-101. Short title.
37-66-102. Purpose.
37-66-103. Definitions.

37-66-104. Acts declared unlawful.
37-66-105. Exemptions.

Part 2 — Board of Landscape Architects

37-66-201. Organization — compensation.
37-66-202. Rulemaking power.

Part 3 — Licensing

37-66-301. License required.
37-66-302. Illegal use of title.
37-66-303. Licensing restricted to individuals — partnerships — local business licensing.
37-66-304. Qualifications not required.
37-66-305. Examinations.
37-66-306. Reciprocity.
37-66-307. Annual renewal — withdrawal — deposit of fees.
37-66-308. Display of license — seal of landscape architect.
Sections 37-66-309 through 37-66-320 reserved.
37-66-321. Revocation or suspension of license — grounds — reinstatement.
37-66-322. Penalty.
37-66-323. Prosecution.

Part 1

General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the

problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808.

Part 2

Board of Landscape Architects

37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its public representative members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and travel expenses as provided in 37-1-133.

History: **En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted (2) for "(2) In carrying out the provisions of this chapter, the only reimbursement members of the board may receive is for travel expenses, as allowed in 2-18-501 through 2-18-503, as amended, incurred in the performance of board duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-66-202. Rulemaking power. The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: **En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).**

Part 3

Licensing

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: **En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.**

37-66-302. Illegal use of title. No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: **En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).**

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses

a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

37-66-306. Reciprocity. The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country and who is certified by the council of landscape architectural registration boards.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

37-66-307. Annual renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in an earmarked revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6).

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979.

Compiler's Comments

Grandfather clause. Sec. 11, Ch. 325, L. 1979, provided: "The board shall issue a license without oral or written examination to any person who was practicing landscape architecture on the effective date of the act originally creating the board (July 1, 1975). However, if a person practicing landscape architecture on the effective date of the act originally creating the board was denied licensure because of requirements which are deleted by [this act], then such person shall be licensed without oral or written examination under the provisions of [this act]."

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-309 through 37-66-320 reserved.

37-66-321. Revocation or suspension of license — grounds — reinstatement. (1) The board may revoke or suspend the license of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this chapter;

(b) conviction of a felony by a court of competent jurisdiction. However, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee.

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Prosecution. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it. If the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

Part 1 — General

Section

37-67-101. Definitions.
37-67-102. Representation as practitioner to be construed as practice.
37-67-103. Exemptions.

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37-67-202. Rulemaking and subpoena power.
37-67-203. Compensation of board members — expenses.
37-67-204. Record of proceedings — register of applicants.

Part 3 — Licensing

37-67-301. License required to practice or offer to practice.
37-67-302. Practice without a license a public nuisance.
37-67-303. Application — contents — fees.
37-67-304. Municipality may not impose fee.
37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training.
37-67-306. Qualifications of applicant for registration as professional engineer.
37-67-307. Qualifications of applicant for registration as engineer-in-training.
37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training.
37-67-309. Qualifications of applicant for registration as land surveyor.
37-67-310. Qualifications of applicant for registration as land surveyor-in-training.
37-67-311. Examinations.
37-67-312. Licensure of professional engineers without examination by comity or endorsement.
37-67-313. Comity consideration for land surveyors from other states.
37-67-314. Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees.
37-67-315. Annual renewal — fee — verification of competency.
37-67-316. Replacement of lost or destroyed certificate.
37-67-317. Deposit of moneys collected.
37-67-318. Roster of licensees to be published by department.
37-67-319. Temporary permits for nonresident practitioners.
Sections 37-67-320 through 37-67-330 reserved.
37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement.
37-67-332. Violations — penalties — enforcement.

Part 1

General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique of measuring land, educated in the basic principles of mathematics, related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the adequate performance of which requires the application of knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, and elevations;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or land surveyors may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a land surveyor or through the use of some other title implies that he is a land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture;

(5) the practice of professional engineering or land surveying in this state by a firm, partnership, corporation, or joint-stock association or by its members, officers, or employees on its behalf, if each person personally supervising and in direct charge of all activities of the firm, partnership, corporation, or joint-stock association which constitutes the practice is a professional engineer or land surveyor holding a certificate of registration under this chapter.

History: En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367.

Part 2

Board of Professional Engineers and Land Surveyors

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: (1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.

37-67-202. Rulemaking and subpoena power. (1) The board shall have the power to adopt and amend all rules, including rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive per diem when actually attending to the work of the board or any of its committees and for the time spent in necessary travel. Such per diem shall be fixed by the board in its sound discretion, but it shall not exceed $25 per day. In addition thereto, each member shall be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, involved in carrying out the provisions of this chapter".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;

(b) the date of the application;

(c) the place of business of the applicant;

(d) his educational and other qualifications;

(e) the branch or branches of engineering in which the applicant qualified;

(f) whether an examination was required;

(g) whether the applicant was rejected;

(h) whether a certificate of registration was granted;

(i) the date of the action of the board; and

(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.

Part 3

Licensing

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a land surveyor unless such person has been duly registered under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted "but may not exceed $30, which" and inserted "and" after "prescribed by the board" in the first sentence of (2); deleted "but may not exceed $40" after "as prescribed by the board" near the beginning of (3); deleted "but may not exceed $50," after "as prescribed by the board" in the middle of (3); deleted "but not to exceed $60," after "a fee as prescribed by the board" near the beginning of (4); deleted "but may not exceed $30" after "as prescribed by the board" near the beginning of (5); deleted "but may not exceed $40" after "as prescribed by the board" near the beginning of (6); deleted "but may not exceed $50," after "the application fee is as prescribed by the board" in the middle of (6); deleted "but may not exceed $60" after "as prescribed by the board" near the beginning of (7); and deleted "but may not exceed $100" after "the application fee is as prescribed by the board" in the middle of (7).

Chapter 489 changed "cost of transfer" to "cost of verification" near the middle of (3) and (6); inserted "approval of the" before "application" and "and payment of an additional fee equal to the appropriate renewal fee" near the beginning of (4); deleted "No additional fee is required for issuance of a certificate." near the middle of (6); and made minor change in grammar.

Coordination Instruction: Section 4, Ch. 489, L. 1981, provided: "If SB No. 412 [Ch. 345, L. 1981], including the section of that bill relating to professional engineers and land surveyors, is passed and approved, the specific dollar amounts of fee changes in sections 1 and 3 will not become effective. The fees will be established as provided in SB No. 412 [Ch. 345, L. 1981]. The remaining parts of this act will be unaffected by SB No. 412 [Ch. 345, L. 1981]." Senate Bill 412 (Ch. 345, L. 1981) was passed and was approved on April 13, 1981.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Effective date: Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

Statement of Intent: The statement of intent attached to SB 422 (Ch. 408, L. 1979) provided in part: "Section 6 gives the board the authority to adopt fees not to exceed the various amounts listed. It is intended that the fees will not exceed amounts necessary to meet administrative costs." SB 422 was amended so that section 6 became section 5.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-67-304. Municipality may not impose fee. No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this chapter.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9).

37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation. The applicant must submit five references with his application for registration as a professional engineer; three references shall be professional engineers with personal knowledge of his engineering experience. In the case of an application for certification as an engineer-in-training, the applicant must submit three character references.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written

examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of an engineering or related science curriculum of 4 years or more, other than the ones approved by the board as being of satisfactory standing, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).**

37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of an engineering or related science curriculum of 4 years or more, other than the ones approved by the board as being satisfactory standing, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b).**

37-67-308. General qualifications of applicants for registration as land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a land surveyor, three of which references shall be registered land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training,. the applicant shall submit three references, one of whom shall be a registered land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects of which he has been in charge, recommendations by references, and a reviewing of these categories. An interview may be held at the board's discretion. Educational credit for institute courses, correspondence courses, etc., shall be determined by the board. Minimal educational requirements must include 40 quarter credit hours in surveying techniques and principles and practices of surveying curricula prescribed by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981.

Compiler's Comments

1981 Amendment: Added last sentence in subsection (2).

37-67-309. Qualifications of applicant for registration as land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor:

(1) have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 3 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board;

(2) have 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours passed, or equivalent semester hours, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying with a minimum of 4 years of experience in charge of land surveying projects under the supervision of a registered land surveyor and have passed the examinations as required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).

37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) Have a bachelor of science degree in an approved curriculum and present evidence satisfactory to the board that he has had, in addition thereto, at least 2 years of combined office and field experience in land surveying with a minimum of 1 year in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board.

(2) Have at least 2 years of formal education in an approved curriculum above high school level with at least 90 quarter credit hours or equivalent semester hours passed or the equivalent approved by the board and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying with a minimum of 2 years in charge of land surveying projects under the supervision of a land surveyor and have passed the written examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b).

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering examiners, whose qualifications meet the requirements of this chapter, may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i).

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration or comparable qualifications to engage in the practice of land surveying issued from a state, territory, or possession of the United States will be given comity consideration. However, he may be asked to take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii).

37-67-314. Issuance of certificates — seal of engineer or land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a land surveyor, "land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "land surveyor". Plans, specifications, plats, and reports prepared by a registrant shall when issued be certified, signed, and stamped with the seal or facsimile thereof. It shall be unlawful for a registrant to affix or permit his seal and signature or facsimile thereof to be affixed to any plans, specifications, plats, or reports after the expiration of a certificate or for the purpose of aiding or abetting any other person to evade or attempt to evade any provision of this chapter.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or land surveyor.

History: En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360.

37-67-315. Annual renewal — fee — verification of competency. (1) Certificates of registration expire on December 31 of the appropriate year and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December of the appropriate year by the payment of a fee as set by the board for either a professional engineer or land surveyor. For renewal of a dual license as both a professional engineer and land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially in the month of December of the appropriate year does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate by December 31 of the appropriate year shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid.

History: En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 345 deleted ", not to exceed $60 biennially," after "by the payment of a fee" in the last sentence of (1).

Chapter 489 deleted ", or both" after "professional engineer or land surveyor" in the fourth sentence of (1); added last sentence in (1); changed "additional renewal period" to "additional year of the biennium" near the end of (3); added subsection (4).

Coordination Instruction: Section 4, Ch. 489, L. 1981, provided: "If SB No. 412 [Ch. 345, L. 1981], including the section of that bill relating to professional engineers and land surveyors, is passed and approved, the specific dollar amounts of fee changes in sections 1 and 3 will not become effective. The fees will be established as provided in SB No. 412 [Ch. 345, L. 1981]. The remaining parts of this act will be unaffected by SB No. 412 [Ch. 345, L. 1981]." Senate Bill 412 (Ch. 345, L. 1981) was passed and was approved on April 13, 1981."

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a statement of intent and a preamble. For the texts see compiler's comments at 37-1-134.

Statement of Intent: The statement of intent attached to SB 422 (Ch. 408, L. 1979) provided in part: "Section 7 gives the board the authority to adopt rules that define the maintenance of competency. The rules shall provide that competency may be evidenced by either continued active practice or other activities.

As regards the continued practice alternative the rules should prescribe the number of hours of practice required during the 2 year renewal period and should define the types of activities which constitute active practice.

As regards the "other activities" alternative the following areas should be addressed:

(a) types of activities that will fulfill the requirements, including but not limited to classroom instruction, seminars, examinations, intrafirm or intracompany group study programs, or home study;

(b) standards for determining programs to be approved for fulfillment of the requirements such as adequacy of facilities, qualifications of instructors, and course content;

(c) the basic content and the procedure and passing grade for examinations, if any, required; and

(d) methods of monitoring compliance." SB 422 was amended so that section 7 became section 6.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354.

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered land surveyors shall be published by the department. Copies of this roster shall be mailed to each person registered. Copies shall also be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to the public on request at a fee established by the board.

History: En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979.

Compiler's Comments

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

History: En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979.

37-67-320 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and land surveyors adopted by the board;

(e) if a land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend, or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979.

Compiler's Comments

Effective date. Sec. 10, Ch. 408, L. 1979, provided: "This act is effective on passage and approval." Approved March 31, 1979.

37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired or revoked certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

Part 1 — General

Section

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37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration.
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37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of money collected.
37-68-314. Qualifications for licensing examination — when no discretion in board.
Sections 37-68-315 through 37-68-320 reserved.
37-68-321. Suspension or revocation of license.
37-68-322. Penalty.

Part 1

General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); changed internal references to the department and the board.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the

business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979.

Part 2

State Electrical Board

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5).

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch. 546, L. 1979) provided in part: "Section 3 defines and, together with other sections, provides for regulation of a new classification of license, the residential electrician's license. Rules relating to the residential license should cover all areas now covered by board rules for journeyman and master electricians. The rules should set forth the basic content and the procedures and passing examination for the residential license. The examination should be tailored to meet the requirements for work as a residential electrician.

When appropriate and in conformance with law, the board may amend existing rules to make them applicable to the residential license."

"Section 3" appears to refer to 37-68-103, as amended by Chapter 546. Section 37-68-201 was not amended by Chapter 546.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "Each member of the board shall receive $25 per day for each day served in the discharge of his duties, together with travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in the performance of his duties".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-68-301. License required to engage in electrical work. A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until he has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979.

Compiler's Comments

Effective date. Sec. 18, Ch. 546, L. 1979, provided: "This act is effective on passage and approval." Approved April 12, 1979.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, supervising, or installing wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1).

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination

for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

37-68-306. Temporary permits pending examination. The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, or residential electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To insure impartiality, the examination for either the master's or journeyman's license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but shall be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on the July 15 which is at least 1 year but not more than 2 years subsequent to the date of issuance.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.

37-68-309. Electricians licensed by other states — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the board may grant licenses to electricians licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: **En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.**

37-68-310. Annual renewal. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee prescribed by the board shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "an additional fee prescribed by the board" for "an additional fee of $5" in the middle of the second sentence.

Fees Prescribed by Board — Statement of Intent and Preamble: Chapter 345, L. 1981 (SB 412), that amended this section relating to the board prescribing fees, contained a Statement of Intent and a Preamble. For the texts see Compiler's Comments at 37-1-134.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-311. Examination fee — annual fee — specific exemption for apprentices. (1) Master electricians who are not electrical contractors and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee set by the board. The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

History: **En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this chapter is entitled to have his license renewed for the ensuing year by payment to the department of the license fee before the date of expiration of the license.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979.

Compiler's Comments

Statement of intent. The statement of intent attached to SB 390 (Ch 546, L. 1979) provided in part: "Sections 13 and 14 give the board authority to prescribe various fees. This must be done by rule. It is intended that each fee not exceed the amount necessary to meet the cost of administering the program to which it relates."

37-68-313. Reasonable fees — deposit of money collected. All fees established by the board under this chapter must be reasonably related to the respective program costs. Money collected by the department under this chapter shall be deposited in the earmarked revenue fund for the use of the board.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979.

37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a master electrician, a journeyman electrician, or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

History: En. Sec. 1, Ch. 332, L. 1981.

Compiler's Comments

Codification Instruction: Section 2, Ch. 332, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 37, chapter 68, part 3, and the provisions of Title 37, chapter 68, apply to section 1."

37-68-315 through 37-68-320 reserved.

37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, or residential electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license.

History: **En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.**

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction thereof:

(a) if a person, be punished by a fine not more than $500 or by imprisonment for a term not to exceed 6 months or by revocation of his license or by such fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who shall personally participate in or be accessory to any violation of this chapter by such partnership, association, corporation shall be subject to the penalties herein prescribed for individuals.

History: **En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820.**

CHAPTER 69

PLUMBERS

Part 1 — General

Section

37-69-101. Definitions.
37-69-102. Exceptions.
37-69-103. No penalty for hiring unlicensed plumber.

Part 2 — Board of Plumbers

37-69-201. Chairman — quorum.
37-69-202. Rulemaking power — records.
37-69-203. Compensation of board members — expenses.

Part 3 — Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available.
37-69-302. Apprenticeship allowed.
37-69-303. Application — contents — requirements.
37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority.
37-69-305. Qualifications of applicants for master plumber's license — restriction on authority.
37-69-306. Examination — issuance of license.
37-69-307. Examination fee and annual renewal fee.
37-69-308. Deposit of fees.
Sections 37-69-309 through 37-69-320 reserved.
37-69-321. Revocation or suspension of license — grounds.
37-69-322. Revocation or suspension of license — procedure.
37-69-323. Restrictions on and responsibility for employees of master plumber.
37-69-324. Penalty.

Part 1

General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) "Plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises and includes potable water piping, water heaters, and vents for the premises.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: **En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department of commerce" for "department of professional and occupational licensing" in (2); and changed internal references to the department and the board.

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in farms or ranches having their own private water supply and sewage disposal systems;

(d) in cities and towns extending their own city water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer.

(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters; refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.

Part 2

Board of Plumbers

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: (1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.

Compiler's Comments

1981 Amendment: Substituted section for "A member of the board is entitled to compensation of $20 for each day while actually engaged in the work of the board and reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503".

Board Compensation and Travel Expenses — Preamble and Title: The Title and Preamble of SB 463 (Ch. 474, L. 1981), which provided for uniform compensation and travel expenses for board members, are located in the Compiler's Comments under 37-1-133.

Part 3

Licensing

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice to the board of plumbers and upon their approval, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available.

History: En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1).

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements shall be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: **En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3).**

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 years' experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 years' experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a);

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) A master plumber shall not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: **(1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979.**

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

History: **(1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part).**

37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires 1 year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: **En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979.**

Compiler's Comments

Statement of intent. The statement of intent attached to SB 458 (Ch. 549, L. 1979) provided: "Section 6 allows the board to prescribe examination and renewal fees. This must be done by rule. It is intended that an examination fee will not exceed the cost of administering the examination for which it is paid, and that a renewal fee will not exceed other administrative costs."

37-69-308. Deposit of fees. Money paid for license fees under this chapter shall be deposited in the earmarked revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407.**

37-69-309 through 37-69-320 reserved.

37-69-321. Revocation or suspension of license — grounds. (1) The license and permit granted as herein provided may be at any time revoked for incompetency, dereliction of duty, or other sufficient cause after a full and fair hearing by said board.

(2) Any person, firm, or corporation licensed under the provisions of this chapter who performs plumbing work in the field of plumbing below the minimum basic standards for plumbing as set forth in the state plumbing code is subject to having his or its license revoked or suspended by the board.

History: **(1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.**

37-69-322. Revocation or suspension of license — procedure. (1) Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion for matters in its knowledge or may be taken on the information of another. Accusations must be in writing and verified by a party familiar with the facts charged.

(2) On receiving the accusation, the board shall, if it considers the accusation sufficient, make an order setting it for hearing and requiring the accused to appear and answer the charge or accusation at the hearing.

(3) If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on the hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period.

History: **(1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.**

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: **En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).**

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this chapter shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: **En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.**

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-70-101. En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

37-70-201. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

37-70-301. En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-311. En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act.
6. Apprenticeship.
7. Women in Employment.
Chapters 8 through 30 reserved.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

Section
39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1

General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor which regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department of labor and industry, the commissioner of labor and industry or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing herein contained shall in any manner confer upon the commissioner the authority to interfere in any manner with the conduct of the matters under the control of the workers' compensation division, nor shall the commissioner be charged with the duty of enforcing any of the laws of the state pertaining to the affairs of the workers' compensation division or with the enforcement of the safety provisions of the Workers' Compensation Act.

(4) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2).

39-1-104. Cooperation with federal government. The department of labor and industry may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

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Part 1

General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Part 2

General Obligations of Employers

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Part 3

General Prohibitions on Employers

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

39-2-304. Lie detector tests prohibited — exception. (1) No person, firm, corporation, or other business entity or representative thereof shall require as a condition for employment or continuation of employment any person to take a polygraph test or any form of a mechanical lie detector test. A person who violates this section is guilty of a misdemeanor.

(2) This section shall not apply to public law enforcement agencies.

History: **En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120.**

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: **En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.**

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: **(1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.**

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the performance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: **(1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.**

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: **En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.**

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217.

Part 5

Termination of Employment

39-2-501. Termination of employment generally. Every employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(a) the death of the employer; or
(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

39-2-504. Termination by employer for fault. An employment, even for a specified term, may be terminated at any time by the employer in case of any willful breach of duty by the employee in the course of his employment or in case of his habitual neglect of his duty or continued incapacity to perform it.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Termination by employee for fault. An employment, even for a specified term, may be terminated by the employee at any time in case of any willful or permanent breach of the obligations of his employer to him as an employee.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.

Part 7

General Liability Arising From Employment Relationship

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102,

R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3) is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Part 8

Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge. It is the duty of any person after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

History: En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311.

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.

CHAPTER 3

WAGES AND WAGE PROTECTION

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Part 1

General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Part 2

Payment of Wages

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Commissioner of labor" refers to the director, commissioner, or chief of the labor department as such department is defined by law or any person or persons designated by him for the purpose of this part.

(2) "Employ" means permit or suffer to work.

(3) "Employee" includes any person who works for another for hire.

(4) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

(5) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3).

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each employee the wages earned by such employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee is absent from the regular place of labor, he is entitled to such payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives his wages earned at least once monthly.

History: **En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979.**

39-3-205. Payment of wages when employee separated from employment prior to payday. (1) Except as provided in subsection (2), whenever any employee is separated from the employ of any employer, all the unpaid wages of such employee shall become due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, where an employer's payroll checks originate at an office outside the state, the time provided herein for payment of wages shall be extended for 3 additional days.

(2) When an employee is separated for cause from employment by the employer, all the unpaid wages of the employee shall become due and payable immediately upon such separation.

History: **En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979.**

39-3-206. Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows: a sum equivalent to the fixed amount of 5% of the wages due and unpaid shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than 20 days after the date such wages were due.

History: **En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).**

39-3-207. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of 39-3-206 which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages.

History: **En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304.**

39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such employee may sue to recover his wages earned, together with the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: **En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979.**

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

39-3-212. Court enforcement of commissioner's determination. A determination by the commissioner of labor and industry made after a hearing as provided for in parts 2 and 4 of this chapter may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination if the time provided to initiate judicial review by the employer has passed. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the commissioner's determination.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4.

39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: **En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.**

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: **En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.**

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: **En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.**

Part 4

Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: **En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.**

39-3-402. Definitions. As used in this part the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer.

(4) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided, however, that in no case shall such inclusion exceed an amount equal to 40% of the total wage paid by such employer to such employee.

History: **En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302.**

39-3-403. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: **En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305.**

39-3-404. Minimum wage. (1) Except as may otherwise be provided pursuant to this part, every employer shall pay to each of his employees wages at a rate not less than provided in subsections (1)(a) and (1)(b), save and except for farm workers as herein defined:

(a) $2.50 an hour for the first year from July 1, 1981;

(b) $2.75 an hour for the second year from July 1, 1981, and thereafter.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(i) $575 a month for the first year from July 1, 1981;

(ii) $635 a month for the second year from July 1, 1981, and thereafter.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981.

Compiler's Comments

1981 Amendment: Increased minimum wage form $1.80 to $2.50 in subsection (1)(a), from $2.00 to $2.75 in subsection (1)(b), from $420 to $575 in subsection (2)(b)(i), and from $460 to $635 in subsection (2)(b)(ii); changed year from 1975 to 1981 throughout section.

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(e) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(f) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(g) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(h) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(i) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(j) a driver employed by an employer engaged in the business of operating taxicabs;

(k) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(l) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight; or

(m) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1).

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2)(m).

Commissioner Correction: In subsection (2)(h)(ii), "34-3-404" was changed to "39-3-404" by the Code Commissioner, 1979, to correct a typographical error.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: **(1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.**

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).**

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.**

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.**

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: **En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.**

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: (1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.

39-3-510. Show-cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: **En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.**

39-3-517. Suit on bond. Any person whose wages or salary has remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: **En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.**

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: **En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.**

Part 6

Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title. This part shall be known as the "Restaurant, Bar, and Tavern Wage Protection Act".

History: **En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.**

39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of lessees conducting business as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the lessee ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the department of labor and industry.

History: **En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "the division of employment security of" before "the department of labor and industry" near the end of the section.

Short Form Amendment: The 1981 amendment of this section is a short form amendment. See compiler's comment to Title 2, ch. 15, part 17.

39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a house where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverages Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Employee" means a person who works for wages or salary in the service of an employer.

(5) "Lessee" means one to whom a lease is made.

(6) "Liquor" means any beverage so defined in the Montana Alcoholic Beverages Code.

(7) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(8) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004.

39-3-604. Bond to be filed by lessee — bond requirements. (1) Every person who leases from another person premises for the purpose of conducting therein a business as a restaurant, bar, or tavern is hereby required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner of labor and industry. Said bond shall at all times be kept in full force and effect and any cancellation or revocation thereof or withdrawal of the sureties therefrom is grounds for enjoining the conduct of business, as provided for in 39-3-607, until such time as a new bond of like tenure and effect shall have been filed and approved as herein provided.

(2) The bond and affidavit required by subsection (1) of this section shall be filed with the commissioner of labor and industry. The state of Montana shall be named as the obligee therein, with good and sufficient sureties to be approved by the attorney general.

(3) Such bond shall be conditioned to assure that in any lease transaction of the type referred to in 39-3-608 the persons who perform labor or other personal services for the lessee are guaranteed their wages in the event the lessee ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the division of employment security as a result of payroll taxes.

History: Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979.

39-3-605. New or additional bond. The commissioner of labor and industry may require a new bond or a bond of a greater amount than double the semimonthly payroll whenever the commissioner deems it necessary for the protection of the state of Montana or the employees of a lessee.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-606. Power of commissioner to discharge existing sureties and require others. The commissioner of labor and industry may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. Enjoining lessee's business until bond filed. If any person engages in the restaurant, bar, or tavern business as lessee without having first filed a bond as required by 39-3-604(1), the attorney general, the commissioner of labor and industry, or any citizen, group of citizens, or any association in the county where the violator conducts his business may institute an action to enjoin such person from engaging in the business until compliance with this part has been met.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008.

39-3-608. Unlawful for lessee to operate business without bond. From and after July 1, 1965, it shall be unlawful for any person to lease premises to be used as the place for conducting a restaurant, bar, or tavern business without first having filed with the commissioner of labor and industry a bond in accordance with the requirements of 39-3-604(1).

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002.

Part 7

Contractors' Bonds for Wages and Benefits

39-3-701. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

(3) "Resident contractor" means any person who is a bona fide resident of this state, any partnership or association, the majority of whose members are bona fide residents of this state, or any corporation organized and existing under the laws of the state of Montana.

History: (1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).

39-3-702. Rules. The commissioner shall promulgate any rules necessary to carry out the provisions of this part.

History: En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.

39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements. (1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within 1 week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Only one bond shall be required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3).

39-3-704. Exception. The provisions of this part do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of $50,000.

History: En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).

39-3-705. Suit on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703.

39-3-706. Liability of person contracting with contractor for failure to require bond. Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in 39-3-703(1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

History: En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2).

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

Section

39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
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39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.
39-4-109. Cement plants, quarries, and hydroelectric dams.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: (1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53, L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not

less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

39-4-103. Underground miners and smeltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. In cases of emergency when life or property is in imminent danger this subsection does not apply.

(2) For firefighters in cities of the first and second class, a workweek consists of a maximum of 40 hours during a 5-day week.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees

or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) Every person, corporation, stock company, or association of persons who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: (1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.

39-4-109. Cement plants, quarries, and hydroelectric dams. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries and hydroelectric dams.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: (1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: (1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

Part 1 — General Provisions

Section

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Part 1

General Provisions

39-5-101. Short title. This chapter shall be known and cited as "The Employment Agency Act".

History: **En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.**

39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for professional athletes, or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(6) "Director" means the commissioner of the department of labor and industry.

(7) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(8) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes.

History: En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "agents for professional athletes" in (1)(c) and added subsection (8).

39-5-103. Administration — rules. The director shall administer the provisions of this chapter and shall issue from time to time reasonable rules for enforcing and carrying out the provisions and purposes of this chapter.

History: En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1).

39-5-104. Provisions of chapter exclusive. The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. Power of political subdivision to license for revenue purposes not affected. This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state to provide for the licensing of private employment agencies solely for revenue purposes.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2

Licensing

39-5-201. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter.

History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the director a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license. The application must be signed by the applicant and sworn to before a notary public and must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979.

39-5-203. Grounds for denial, suspension, or revocation of license. The director may by order deny, suspend, or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the director or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the director pursuant to this chapter.

History: **En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429.**

39-5-204. License fees. The following fees shall be charged by the director to those parties licensed as employment agencies:

(1) original applications, $100;

(2) renewal per year, $100;

(3) branch license, both original and renewal, $100;

(4) transfer of license, $25;

(5) approval of amended or new contracts, $15 per contract.

History: **En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430.**

39-5-205. Disposition of license fees. All license fees shall revert to department of labor and industry to be used for administration of this chapter.

History: **En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3).**

39-5-206. Bond of licensee. Before conducting any business as an employment agency, each licensee shall file with the director a surety bond in the sum of $2,000 running to the state of Montana for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule adopted by the director pursuant to 39-5-103.

History: **En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425.**

39-5-207. License to be conspicuously displayed. Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).**

39-5-208. Expiration of license. An employment agency license shall expire June 30.

History: **En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.**

39-5-209. Consent required prior to transfer of license or connection of additional persons with business. No license granted pursuant to this chapter shall be transferable without the consent of the director. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the director. Consent may be withheld for any reason for which an original application for a license might have been rejected if the person in question had been mentioned therein.

History: **En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428.**

Part 3

Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept. (1) Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited, the name and address of the applicant, kind of position ordered by the employer, kind of position accepted by the applicant, probable duration of the employment, if known, rate of wage or salary to be paid the applicant, amount of the employment agency's fee, dates and amounts of refund, if any, and reason for such refund, and the contract agreed to between the agency and applicant.

(2) Unless otherwise provided by rules adopted by the director, such records shall be maintained for a period of 3 years from the date in which they are made.

History: **En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part).**

39-5-302. Applicant to receive contract — required contents of contract. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) the name, address, and telephone number of the employment agency;

(2) trade name, if any;

(3) the date of the contract;

(4) the name of the applicant;

(5) the amount of the fee to be charged the applicant;

(6) a notice in eight-point boldface type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point boldface type or larger. The notice shall read as follows: "This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: **En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.**

39-5-303. Regulation of fees — disapproval of contract. (1) The fee charged by any employment agency for its services must be based on a percentage of the income of the applicant during his first year of employment. The percentage charged must be determined by the agency and is not subject to disapproval by the director.

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the director's approval for the use of such contract. The director shall disapprove any proposed contract which either tends to be or is vague, deceitful, or misrepresentative.

History: En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsections (1) through (4) before the existing language designated as (5); deleted "or attempts to charge an unreasonable fee or is in violation of this chapter" from the end of (5); made minor changes in grammar.

39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement. No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).

39-5-305. Agency not to induce employee to quit or employer to discharge. No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee, nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).

39-5-306. Agency not to refer applicant where strike or lockout exists. No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if such licensee has knowledge that such condition exists.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

39-5-307. Agency to reconfirm job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.

39-5-308. When agency may charge a fee. (1) No employment agency shall charge or accept a fee or other consideration from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch, 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2).

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two employment agencies, the fee shall be paid to the agency that first contacted the applicant concerning the specific opening, provided that such agency has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such contact with the applicant.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "employment agencies" for "licensees" after "referred to the same position by two"; substituted "agency that" for "licensee who" before "first contacted the applicant"; substituted "such agency" for "he" before "has given the name"; substituted "contact with the applicant" for "contract" at the end of the section.

39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) If employment obtained for an applicant ends in less than 100 calendar days from the first day of employment, regardless of the reason, the fee charged by the agency will be reduced by 1% of the fee for each calendar day remaining of the 100 days.

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the director.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the language in (2) for "Where, due to no fault of such applicant or because the employee or employment is other than as represented by the employment agency, employment is discontinued within 30 days, then all fees paid pursuant to 39-5-309 by such applicant in excess of the applicable maximum for the period worked shall be returned in cash within 7 days after demand."

39-5-312. Agency not to share fees with employer. No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Part 4

Investigations and Enforcement

39-5-401. Investigative powers of director. (1) The director shall have supervisory and investigative authority over all employment agencies. Upon receiving a complaint against any employment agency, the director shall have the right to examine all books, documents, or records in its possession. In addition, the director may examine the office or offices where business is or shall be conducted by such agency.

(2) The director shall have power to compel the attendance of witnesses by the issuance of subpoenas, to administer oaths, and to take testimony and proofs concerning all matters pertaining to the administration of this chapter.

(3) The director shall have authority to demand and examine at the employment agency's regular place of business all books, documents, and records in its possession for inspection.

History: **(1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3).**

39-5-402. Department to forward complaints to agency involved or agency association. Any complaints filed with the department of labor and industry shall be sent to that private employment agency involved or to the Montana private employment agency association.

History: **En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1.**

39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The director may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter.

History: **En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979.**

39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business.

History: **En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.**

39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general or the county attorney acting in the name of the state may petition for the recovery of civil penalties.

History: **En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.**

39-5-406. Jurisdiction over nonresidents. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter, which conduct has had impact in this state which this chapter reprehends. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

Section

39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1

General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less than once every 2 years, the department shall make a report through the governor of its activities and findings to the legislature, which shall be made available to the public.

History: Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd.

Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT

Part 1 — Duties of Department of Labor and Industry

Section
39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave

39-7-201. Definitions.
39-7-202. Regulations.
39-7-203. Unlawful acts of employers.
39-7-204. Reinstatement to job following pregnancy-related leave of absence.
39-7-205. Complaints of violations.
39-7-206. Investigative powers of commissioner.
39-7-207. Findings of fact and decision on complaint.
39-7-208. Individual action.
39-7-209. Court enforcement of commissioner's decision.

Part 1

Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: En. Sec. 2, Ch. 478, L. 1975.

Part 2

Maternity Leave

39-7-201. Definitions. (1) "Commissioner" means the commissioner of labor and industry.

(2) "Employer" means any public or private employer.

History: En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Rulemaking under this part shall comply with the provisions of the Montana Administrative Procedure Act.

History: En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-203. Unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of

pregnancy to be verified by medical certification that the employee is not able to perform her employment duties;

(4) retaliate against any employee who files a complaint with the commissioner under the provisions of this part; or

(5) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1).

39-7-204. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2).

39-7-205. Complaints of violations. (1) A person claiming to be aggrieved by a violation of 39-7-203 or 39-7-204 may make, sign, and file a verified complaint with the commissioner, which shall state the circumstances of the violation and the particulars thereof and shall contain such other information as may be required by the commissioner.

(2) In addition, the commissioner, whenever he has reason to believe that 39-7-203 or 39-7-204 has been or is being violated, may issue a complaint.

History: En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. Investigative powers of commissioner. (1) The commissioner or his authorized representatives may enter and inspect such places, question such employees, and investigate such facts, conditions, or matters as they consider appropriate to determine whether any person has violated any provision of this part or any regulation issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony, and take depositions and affidavits in any proceeding before the commissioner.

History: En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. Findings of fact and decision on complaint. (1) Within 60 days of the receipt of a complaint, the commissioner shall state his findings of fact and decision.

(2) If, upon all the evidence, the commissioner finds that a respondent has engaged in a violation of 39-7-203 or 39-7-204, he shall state his findings of fact and shall order the respondent to reinstate the complainant if she so desires and to pay to the complainant the damages resulting from the violation.

(3) If, upon all the evidence, the commissioner finds that the respondent has not engaged in a violation of 39-7-203 or 39-7-204, he shall state his findings of fact and shall dismiss the complaint.

History: En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. Individual action. Nothing in this part shall preclude an individual from prosecuting a private action in the district court alleging violation of the provisions of this part or any other law.

History: En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. Court enforcement of commissioner's decision. (1) A decision by the commissioner pursuant to 39-7-207 may be enforced by the district court if the commissioner applies to the court, within 60 days from date of decision, for an order enforcing the decision and if the time provided to initiate judicial review by the employer has passed pursuant to Title 2, chapter 4, part 7.

(2) The commissioner shall apply to the district court of the county in which the employer has its principal place of business or in the first judicial district of the state.

(3) A proceeding under this section is not a review of the merits of the commissioner's decision.

History: En Sec. 1, Ch. 286, L. 1979.

Compiler's Comments

Codification. Sec. 2, Ch. 286, L. 1979, provided: "It is intended that section 1 be codified as an integral part of Title 39, chapter 7, part 2, and the provisions of Title 39, chapter 7, part 2, apply to section 1."

CHAPTERS 8 THROUGH 30

RESERVED

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

Part 1 — General Provisions

Section

39-31-101. Policy.
39-31-102. Chapter not a limit on legislative authority.
39-31-103. Definitions.
39-31-104. Rules.
39-31-105. Administrative procedure act applicable.
39-31-106. Board authorized to subpoena witnesses and administer oaths.
39-31-107. Service of subpoenas, notices of hearing, and other process.
39-31-108. Counsel for public parties to litigation.
39-31-109. Existing collective bargaining agreements not affected.

Part 2 — Public Employee Self Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization.
39-31-202. Board to determine appropriate bargaining unit — factors to be considered.
39-31-203. Deduction of dues from employee's pay.
39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right.
39-31-205. Designated labor organizations to represent employees without discrimination.

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification.
39-31-207. Petition on representation question — investigation by board — hearing.
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Part 1

General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district,

school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a confidential employee, as defined in subsection (12) of this section;

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979.

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to the effective date of this act.

History: **En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.**

Part 2

Public Employee Self Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).**

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: **En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).**

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: **En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.**

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support any labor organization, may be required to join or financially support any labor organization as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5).

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification. Certification as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(1) provisions are made for democratic organization and procedures;

(2) elections are conducted pursuant to adequate standards and safeguards;

(3) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(4) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4).

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: **En Sec. 2, Ch. 271, L. 1979.**

Compiler's Comments

Codification. Sec. 3, Ch. 271, L. 1979, provided: "It is intended that section 2 be codified as an integral part of Title 39, chapter 31, part 2; and the provisions of Title 39, chapter 31, apply to section 2."

Part 3

Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: **En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.**

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: **En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).**

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).**

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: **En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.**

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: **(1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).**

39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: **En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.**

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

39-31-309. Factfinding proceedings. (1) The factfinder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the factfinder, the board shall issue subpoenas for hearings conducted by the factfinder. The factfinder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the factfinder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The factfinder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the factfinder from endeavoring to mediate the dispute in which he has been selected or appointed as factfinder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: **En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).**

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: **En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.**

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: **En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.**

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: **En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).**

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-405. Unfair labor practice complaint — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board or any agent designated by the board for such purposes shall issue and cause to be served upon the person a copy of the complaint and a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(2) The person upon whom the charge is served shall file an answer to the complaint.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is

engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after a complaint is submitted to the hearing officer.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and

proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: **En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.**

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

Section
39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Evidence required to show status as designated representative.
39-32-108. Determination of status as designated representative.
39-32-109. Improper employment practices.
39-32-110. Unlawful strikes.
39-32-111. Proceedings in district court.

Part 1

General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: **En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.**

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(3) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals or both.

(4) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (3) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: **En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5).**

39-32-103. Rules. The department of labor and industry may adopt and promulgate rules as to times and places for hearing and notice thereof so as to provide adequate notice and opportunity to be heard to all interested parties, as to elections, and so as to carry into effect the provisions of this chapter.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3).**

39-32-104. Hearings for determination of appropriate unit. The department of labor and industry may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2) or 39-32-108(1).

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1).**

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The department of labor and industry may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the department may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2).**

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the department of labor and industry and said department, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.
History: **En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204.**

39-32-107. Evidence required to show status as designated representative. An employee organization is considered to be the duly designated representative of all the employees in an appropriate unit for the purpose of 39-32-109 if it can show evidence that bargaining rights have been assigned to it by a majority of the employees in that unit.
History: **En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.**

39-32-108. Determination of status as designated representative. (1) If the right of an employee organization to represent the employees in an appropriate unit is questioned by the authority in charge of the facility employing the employees, the employee organization may petition the department of labor and industry for a determination. The department or its representative shall investigate and determine the composition of an appropriate unit, if such determination has not previously been made under 39-32-106, and shall determine the representative, if any, designated to represent the employees in the appropriate unit.

(2) An employee organization found by the department to be authorized by at least 30% of the employees in an appropriate unit may apply for an election by secret ballot to determine its right to represent the employees in that unit. If more than one employee organization claims to represent employees in that unit, the department may conduct an election by secret ballot to determine which is authorized to represent the unit. If any employee organization receives a majority of the valid votes cast at the election, it is considered to be authorized to represent all the employees in that unit for the purpose of 39-32-109.

(3) A determination under this section remains in effect for at least 1 year and until either the health care facility or an employee organization shall apply for a redetermination.
History: **En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.**

39-32-109. Improper employment practices. It is an improper employment practice for a health care facility to do one or more of the following:

(1) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(2) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(3) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(4) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the

purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(5) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

39-32-111. Proceedings in district court. The department of labor and industry, a health care facility, or an employee organization qualified to apply for an election under 39-32-108 may, in the name of its members or in its name, institute proceedings to restrain the commission of any improper practice listed in 39-32-109 or appeal from any determination by the department. The proceeding may be instituted in the district court for any county in which the health care facility does business. The court in such an action may grant mandatory or prohibitory relief or, on appeal, adjudicate whether the department has acted in abuse of discretion or upon arbitrary or discriminatory rules, in which event the court may reverse or modify such determination.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

Section
39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.

39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2

Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: **En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.**

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: **En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.**

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: **En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.**

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: **En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.**

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

Section

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (2).

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board".

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "of personnel appeals" after "board" in (4).

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: **En. Sec. 4, Ch. 472, L. 1979.**

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: **En. Sec. 5, Ch. 472, L. 1979.**

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: **En. Sec. 6, Ch. 472, L. 1979.**

CHAPTERS 35 THROUGH 50

RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

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39-51-3206. Liability for wrongful or improper receipt of benefits.

Chapter Compiler's Comments

Division of Employment Security and Certain Bureaus — Name Change: Section 1, Ch. 349, L. 1981, provided: "The division of employment security and its bureaus created in 2-15-1703 and 39-51-306 are abolished. Their functions are continued in the department of labor and industry provided for in Title 2, chapter 15, part 17. Unless inconsistent with this act, any reference in the MCA to "division of employment security", "division" (of employment security), or any bureau of the division of employment security, including "Montana state employment service bureau" or "unemployment insurance bureau", is changed to "department of labor and industry" or "department" (of labor and industry). Consistent with the intent of this section and without changing the meaning, the code commissioner shall remove any redundancies caused by such name changes."

Part 1

General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: **En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.**

Compiler's Comments

Instructions to code commissioner. Sec. 2, Ch. 57, L. 1979, provided: "The code commissioner is authorized and instructed to change any reference in the Montana code annotated from "unemployment compensation" to "unemployment insurance" except in 7-1-111, 39-51-2306, and 39-51-2501."

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of (1).

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: **En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" near the end of the first sentence.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: **En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.**

Part 2

Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment insurance laws and federal laws falling within the administrator's jurisdiction.

(2) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(3) "Annual total payroll" means the total of the 4 quarters of total payrolls of an employer preceding the computation date as fixed herein.

(4) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(5) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(6) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(7) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(8) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(9) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter.

(10) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(11) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(12) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(13) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this chapter shall be paid.

(14) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(15) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(16) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(17) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(18) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(19) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(20) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(21) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the definition of "department of labor and industry" for "employment security division" in (10); substituted "department" for "division" in (12) and (19)(a).

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year exceeds the sum of $500;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that:

(a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact;

(b) such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession, or business.

(5) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed after July 1, 1975, by all individuals, including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (3) and (4).

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of his son, daughter, or spouse and service performed by a child under the age of 18 in the employ of his father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salesmen paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital.

(l) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in the employ of a school which is not an institution of higher education, prior to December 31, 1977;

(d) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(e) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(f) for a state prison or other state correctional or custodial institution by an inmate of that institution.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (1)(f).

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(b) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

Part 3

General Administrative Provisions

39-51-301. Administration — duties and powers of department. (1) It shall be the duty of the department to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end. Such rules shall be effective upon publication in the manner, not inconsistent with the provisions of this chapter, which the department shall prescribe.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal which shall be judicially noticed.

(3) The department shall report as provided in 2-7-102. Such report shall include a balance sheet of the money in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then-current contributions, which reserve shall be set up by the department in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period.

(4) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-302. Regulations and general and special rules. General and special rules may be adopted, amended, or rescinded by the department only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective 10 days after filing with the secretary of state and publication in one or more newspapers of general circulation in this state. Special rules shall become effective 10 days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the department and shall become effective in the manner and at the time prescribed by law.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, annual reports to the governor, and any other material the department deems relevant and suitable and shall furnish the same to any person upon application therefor.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-304. Personnel. (1) Except as otherwise provided, the department is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties under this chapter. The department may delegate to any such persons such power and authority as it considers reasonable and proper for the effective administration of this chapter and may in its discretion bond any person handling money or signing checks hereunder.

(2) No person who is an officer or committee member of any political party organization or who holds or is a candidate for any public office may be appointed or employed under this chapter.

(3) The department shall hire in accordance with merit system principles adopted by the merit system council.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial appeals referees as are necessary for the proper administration of this chapter, consisting of salaried examiners selected in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended.

(2) The department shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The department is hereby designated and constituted the agency of this state for the purpose of said act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the department may accept money, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section; deleted "create a bureau to be known as the Montana state employment service, which bureau shall" after "shall" at the beginning of (1); deleted "The bureau shall be administered by a full-time salaried director" from the end of (1); substituted "department" for "employment security division" in the second sentence in (3); deleted "The division is directed to appoint the personnel of the Montana state employment service" from the end of (3).

39-51-308. Acquisition and disposition of property by department. (1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property

to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (1).

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4).

Part 4

Financial Administration

39-51-401. Unemployment insurance account — establishment and control. There is hereby established separate and apart from all public money or funds of this state an account in the agency fund known as the unemployment insurance account, which shall be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance account in the agency fund. All money in the account shall be mingled and undivided. This account shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the account;

(3) any property or securities acquired through the use of money belonging to the account;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368,

L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" in the first sentence.

39-51-402. Unemployment insurance account — state treasurer ex officio custodian — accounts and deposits. (1) The state treasurer is the ex officio treasurer and custodian of the unemployment insurance account and shall administer such account in accordance with the directions of the department and shall issue his warrants upon it in accordance with such regulations as the department shall prescribe. He shall maintain within the account three separate accounts:

(a) a clearing account;
(b) an unemployment trust fund account; and
(c) a benefit account.

(2) All money payable to the unemployment insurance account, upon receipt thereof by the department, must be forwarded to the treasurer who shall immediately deposit it in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account upon warrants issued by the treasurer under the direction of the department. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provision of law in this state relating to the deposit, administration, release, or disbursement of money in the possession or custody of this state to the contrary notwithstanding.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the department, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance account.

(5) The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the unemployment insurance account in an amount fixed by the department and in a form prescribed by law or approved by the attorney general. Premiums for the bond shall be paid from the unemployment insurance administration account.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account.

(3) Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: **En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-404. Requisition of money from unemployment trust fund for payment of administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the four preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such five 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the fourth preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration fund but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (3).

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal and private revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter;

(c) all interest and penalties collected on past due contributions as provided by 39-51-1301; and

(d) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance account and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time, but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance account under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal and private revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (1), (5), and (6).

39-51-407. Reimbursement of fund by state. (1) This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received after July 1, 1941, from the United States or any agency thereof under Title III of the Social Security Act, any unencumbered balances in the unemployment insurance administration fund as of that date, any money thereafter granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement.

(2) This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "unemployment insurance division" in the next to last sentence of (1); substituted "department" for "division" in the last sentence of (1).

Part 5

Governmental Cooperation

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make such reports in such form and containing such information as the secretary of labor may from time to time require and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion deems it advisable to perform such acts.

(4) Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation,

and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-503. Agreements with railroad retirement board. The department is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section; deleted "Montana state" before "employment service facilities" in the first sentence; deleted "state" before "employment service facilities" in the last sentence.

39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The department is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Part 6

Records and Reports

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191,

L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department for the purposes of this chapter prior to January 1, 1941, shall be kept on the basis of wages payable and wage records kept by the department for the purposes of this chapter after January 1, 1941, shall be kept on the basis of wages paid.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and shall be subject to being copied by the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Parts 7 through 10 reserved

Part 11

Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed $500. For the purpose of this subsection, the two or more employing units mentioned in subsection (2) or (3) of 39-51-202 shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (2).

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201(19), paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (2).

39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

39-51-1105. Liability of corporate officers for contributions owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in the first sentence.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including $4,200 by an employer to an employee with respect to employment during the calendar years 1972, 1973, 1974, and the first calendar quarter of year 1975.

(2) For the second calendar quarter of the calendar year 1975 through the fourth calendar quarter of 1977, the taxable wage base for each year is $4,800.

(3) Effective January 1, 1978, and thereafter the taxable wage base for each year is $6,000.

(4) For the first calendar quarter of 1979 and thereafter, the taxable wage base for each year is the greater of:

(a) 75% of the average annual wage as determined under 39-51-2201(2) (rounded to the nearest $100 not to exceed an increase of $200 over the taxable wage base of the preceding year) during the calendar year immediately preceding the most recently completed calendar year; or

(b) the amount of taxable wage base specified in the Federal Unemployment Tax Act.

(5) Notwithstanding subsection (4) the taxable wage base for 1979 shall be $7,400.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec.

1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979.

Compiler's Comments

Effective date and retroactive application. Sec. 22, Ch. 685, L. 1979, provided: "Section 39-51-1108, MCA, is effective upon passage and approval and shall be considered to apply as of January 1, 1979." Approved May 9, 1979. Apparently the reference to section 39-51-1108, MCA, is intended to indicate that section as amended by section 8 of Chapter 685.

39-51-1109. Contribution appeals. Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the department or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy is considered the decision of the department. The department or the deputy conducting the review may refer the matter to an appeals referee, may decide the application for review on the basis of such facts and information as may be obtained, or may hear argument to secure further facts. After such review, notice of the decision must be given to the employing unit. Such decision made pursuant to such review is considered the final decision of the department unless the employing unit or any other such interested party, within 5 calendar days after delivery of such notification or within 7 calendar days after such notification was mailed to his last-known address, files an appeal from this decision. Such appeal will be referred to an appeals referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in 39-51-2403.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1110. Refunds to employers. (1) If not later than 3 years after the date on which any contributions or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such contributions or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid contributions to this state under this chapter when such contributions should have been paid to another state under a similar act of such other state, transfer

of such contributions to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all contributions required under this chapter from employers for that year.

History: **En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means December 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means a covered employer who has established a record of accumulated benefits charged to his account in excess of his accumulated contributions paid as of the cutoff date and has a minus experience factor.

(4) "Department" means the department of labor and industry.

(5) "Eligible employer" means a covered employer who has:

(a) paid contributions during each of the 3 fiscal years immediately preceding the computation date;

(b) with respect to such 3 fiscal years, filed all contribution reports prescribed by the department;

(c) paid all contributions due with respect to the 3 fiscal years before the cutoff date of the rate year;

(d) established a record of accumulated contributions in excess of benefits charged to his account; and

(e) achieved a plus experience factor.

(6) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Unrated employer" means a covered employer who has not paid contributions in each of the 3 fiscal years immediately preceding the computation date or an employer who has established a record of accumulated contributions in excess of benefits charged to his account but has not filed all required payroll reports or paid contributions by the cutoff date for any

of the quarters in the 3 fiscal years immediately preceding the computation date.

History: **En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendments:

Chapter 3 substituted "the reporting period ending September 30" for "June 30" in (1), "December 31" for "September 30" in (2), and "September 30" for "June 30" in (6).

Chapter 349 substituted "department" for "division" in (2) and (5)(b); substituted the definition of "department of labor and industry" for "employment security division" in (4).

Codification: Sec. 20, Ch. 685, L. 1979, provided: "It is intended that sections 1 through 7 and 9 through 16 of this act be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, apply to sections 1 through 7 and 9 through 16 of this act." The reference to part 21 is apparently a typographical error. Part 11 is more appropriate for sections 1 through 7, and they have been codified as 39-51-1121 through 39-51-1126. Section 1 provides definitions and specifically states that they apply to part 11. The Code Commissioner codified sections 9 through 16 in part 12 as 39-51-1212 through 39-51-1219 because part 12 more specifically deals with the subject matter. Section 39-51-1211 was added by the Code Commissioner to ensure that the definitions in section 1 apply.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: **En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: **En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the taxable year for which the change is effective.

History: **En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1125. Computation of payments in lieu of contributions. (1) Qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half of the amount of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

(5) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment insurance fund is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services, as defined in 39-51-204(3)(c), to the extent that the unemployment insurance fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

History: En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (4).

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the department not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Part 12

Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-51-1201 through 39-51-1205. En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109.

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the department for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

Compiler's Comments

Codification. Sec. 20, Ch. 685, L. 1979, provided: "It is intended that sections 1 through 7 and 9 through 16 of this act be codified as an integral part of Title 39, chapter 51, part 21, and the provisions of Title 39, chapter 51, apply to sections 1 through 7 and 9 through 16 of this act." The reference to part 21 is apparently a typographical error. Part 11 is more appropriate for sections 1 through 7, and they have been codified as 39-51-1121 through 39-51-1126. Section 1 provides definitions and specifically states that they apply to part 11. The Code Commissioner codified sections 9 through 16 in part 12 as 39-51-1212 through 39-51-1219 because part 12 more specifically deals with the subject matter. Section 39-51-1211 was added by the Code Commissioner to ensure that the definitions in section 1 apply.

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

History: En. Sec. 9, Ch. 685, L. 1979.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of his record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below for the calendar year 1980 and for each calendar year thereafter:

(a) Each employer is given an "experience factor" which is contributions paid minus benefits charged on each employer's account for the most recent 3 fiscal years immediately preceding the computation date, divided by his average annual taxable payroll rounded to the next lower dollar amount for the same 3 fiscal years. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of his taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding him on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group shall be identified by the rate class

number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite his rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of his taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of his taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which he would have occupied had his taxable payroll amount or experience factor as changed been used in determining his position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 3 substituted "October 1" for "July 1" in (1); substituted "for the most recent 3 fiscal years immediately preceding the computation date" for "since July 1, 1976" and substituted "same 3 fiscal years" for "3 fiscal years immediately preceding the computation date" in (2)(a).

Chapter 349 substituted "department" for "division" in (1).

Chapter 575 substituted "39-51-1214" for "39-51-1213" at the end of (4)(c).

Retroactive Repeal of Former Law: Sec. 21, Ch 685, L. 1979, provided in part: "Section 39-51-1204, MCA, is repealed retroactive to January 1, 1979."

39-51-1214. Benefit payments chargeable to employer experience rating accounts. Benefits paid shall be charged to the account of the covered employer, except cost reimbursement and governmental employers, who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits. No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(1) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(2) if paid in accordance with the extended benefit program triggered by either national or state indicators.

History: En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "prior to June 30, with respect to benefit years commencing with July 1, 1976, and thereafter . . . as of June 30 of each year preceding the calendar year for which a covered employer's contribution rate is effective" in the first paragraph.

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid for the most recent 3 fiscal years immediately preceding the computation date, prior to the cutoff date. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account for the most recent 3 fiscal years ending September 30. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "for the most recent 3 fiscal years immediately preceding the computation date" for "for covered employment" in the second sentence and added "for the most recent 3 fiscal years ending September 30" in the third sentence.

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: En. Sec. 13, Ch. 685, L. 1979.

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section.

History: En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981.

Compiler's Comments

1981 Amendment: In (1), deleted a clause requiring an employer rate increase whenever a recomputed trust fund balance ratio increased.

Code Commissioner Deletion: The Code Commissioner 1981 deleted "except that for calendar year 1979, the tax rate Schedule X shall be applied as provided for in [39-51-1202]" as being temporary and referring to a repealed section.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0150)	(.0145)	(.0140)	(.0130)
Average Tax Rate	1.3	1.5	1.7	1.9

Rate Class	Contribution Rates For Eligible Employers			
1	0.2%	0.3%	0.5%	0.7%
2	0.4	0.6	0.8	1.0
3	0.7	0.9	1.1	1.3
4	1.0	1.2	1.4	1.6
5	1.3	1.5	1.7	1.9
6	1.6	1.8	2.0	2.2
7	1.9	2.1	2.3	2.5
Contribution Rates For Unrated Employers:	2.1%	2.3%	2.5%	2.7%

Rate Class	Contribution Rates For Deficit Employers			
1	2.2%	2.4%	2.6%	2.8%
2	2.4	2.6	2.8	3.0
3	2.6	2.8	3.0	3.2
4	2.8	3.0	3.2	3.4
5	3.0	3.2	3.4	3.6
6	3.2	3.4	3.6	3.8

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0120)	(.0110)	(.0095)	(.0075)	(.0050)	(.....)
2.1	2.3	2.5	2.7	2.9	3.1
		Contribution Rates For Eligible Employers			
0.9%	1.1%	1.3%	1.5%	1.7%	1.9%
1.2	1.4	1.6	1.8	2.0	2.2
1.5	1.7	1.9	2.1	2.3	2.5
1.8	2.0	2.2	2.4	2.6	2.8
2.1	2.3	2.5	2.7	2.9	3.1
2.4	2.6	2.8	3.0	3.2	3.4
2.7	2.9	3.1	3.3	3.5	3.7
		Contribution Rates For Unrated Employers			
2.9%	3.1%	3.3%	3.5%	3.7%	3.9%
		Contribution Rates For Deficit Employers			
3.0%	3.2%	3.4%	3.6%	3.8%	4.0%
3.2	3.4	3.6	3.8	4.0	4.2
3.4	3.6	3.8	4.0	4.2	4.4
3.6	3.8	4.0	4.2	4.4	4.4
3.8	4.0	4.2	4.4	4.4	4.4
4.0	4.2	4.4	4.4	4.4	4.4

History: **En. Sec. 15, Ch. 685, L. 1979.**

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bears to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management or ownership or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, his rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: **En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

Part 13

Unpaid Contributions

39-51-1301. Penalty and interest on past-due contributions. (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater, and shall bear interest at the rate of 1% per month.

(2) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(3) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

History: **En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendments: Chapter 2 deleted the first sentence in (1) which assessed a $10 penalty for late filing of unemployment contribution reports; made other changes in phraseology in (3).

Chapter 349 substituted "department" for "division" in (3).

39-51-1302. Summary or jeopardy assessment of unpaid contributions. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified or registered mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof

mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due must be collected by civil action in the name of the Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action.

(2) Civil actions brought under this section to collect contributions or interest thereon from an employer must be heard by the court at the earliest possible date and are entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this chapter and cases arising under the workers' compensation law of this state.

(3) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "division" before "Montana department of labor and industry" in (1).

39-51-1304. Lien for payment of unpaid contributions — levy and execution. (1) If any contributions payable by an employer under this chapter or any portion thereof is not paid within 25 days after the same becomes due, the department may issue a certificate under its official seal, setting forth the amount of contributions due and interest accrued, directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the employer owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest, and costs of executing the same and to return such certificates to the department and pay to the department the money collected by virtue thereof by a time to be therein specified, not more than 90 days from the date of the certificate.

(2) The sheriff shall, within 5 days after the receipt of the certificate, file with the clerk of the district court of his county a copy thereof and thereupon the clerk of the district court shall enter in the judgment docket in the column for judgment debtors the name of the employer mentioned in the

certificate and in the appropriate columns the amount of contributions due and the penalties for which the certificate is issued and the date when such copy is filed, and thereupon the amount of such certificate so docketed shall become a lien upon the title to and interest in real property or chattels real of the employer against whom it is filed in the same manner as a judgment docketed in the office of such clerk.

(3) The sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgment of a court of record and shall be entitled to the same fees for his services in executing the certificate, to be collected in the same manner.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (1).

39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions. (1) In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

(2) In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition under the Federal Bankruptcy Act, contributions then or thereafter due shall be entitled to priority of payment as a debt due the sovereign power as provided by the Bankruptcy Act of June 22, 1938 (Chap. 575-52 Stat. 840).

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137.

39-51-1306. Reciprocity with other states for collection of unpaid contributions. (1) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such contributions and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance contributions, penalties, and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368,

L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" in (2).

Parts 14 through 20 reserved

Part 21

Benefit Eligibility

39-51-2101. Total unemployment — when. An individual shall be deemed totally unemployed in any week during which he performed no work and earned no wages or a week of less than full-time work with wages of less than 2 times his weekly benefit amount. No individual is unemployed in any week that he is self-employed.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1).

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the department may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division".

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" throughout (2).

39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within his benefit year only if the department finds that:

(1) he has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the department may prescribe, except that the department may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may register and report for work by mail or through other governmental agencies;

(2) he has made a claim for benefits in accordance with the provisions of 39-51-2401;

(3) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(4) prior to any week for which he claims benefits he has been totally unemployed for a waiting period of 1 week. However, if claimant's benefit year expires during a period of compensable unemployment, claimant will continue to receive weekly benefits in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2105. Qualifying wages. (1) To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period an amount totaling not less than 1 ½ times his base period high quarter wages.

(2) On and after July 1, 1980, to qualify for benefits, an individual must have had at least 20 weeks of work with an average of $50 per week in subject employment in the base period. To qualify for benefits, the total base period wages must be $1,000 or more.

(3) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services:

(a) which were not employment as defined in 39-51-204(1)(a) and (1)(b) at any time during the 1-year period ending December 31, 1975; and

(b) which:

(i) are agricultural labor, as defined in 39-51-203(8), or domestic service, as defined in 39-51-203(9); or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in 39-51-203(5), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in 39-51-203(6), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094) or for services performed for an employer as defined in said act shall not be included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e).

39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections (2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

39-51-2110. Payment of benefits to aliens. (1) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h).

Part 22

Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) Any individual whose benefit year begins on or after

July 1, 1971, shall receive as his weekly benefit amount an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1.

(2) On and after July 1, 1980, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. However, such amount shall not be less than the minimum, or more than the maximum weekly benefit amount.

(3) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest multiple of $1.

(4) The minimum weekly benefit amount shall be 15% of the average weekly wage.

(5) The department shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (5).

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest dollar.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A).

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. If a claimant is receiving payments under the federal Social Security Act or the federal Railroad Retirement Act or from a pension to which he has contributed in part, his weekly benefit amount must be reduced by 50% of the amount that he is receiving from such payments.

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the division shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "This provision does not apply to the receipt of benefits under the federal Social Security Act, as amended" from (1); added the last sentence of (1) and added subsections (2) and (3). Subsection (4) was added by Governor's amendment.

Effective Date: Section 2, Ch. 41, L. 1981, provided: "This act is effective on passage and approval." Approved March 11, 1981.

Statement of Intent: The statement of intent added by Governor's amendment to HB 76 (Ch. 41, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Employment Security Division of the Department of Labor and Industry in subsection (4). It is the intent of this bill to grant the Division the authority to adopt the minimum federal offset requirements as set forth in the federal Employee Retirement Income Security Act of 1974, as amended. This is a conformity requirement of the federal Employee Retirement Income Security Act which is imposed on the states."

39-51-2204. Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter		Weeks' Duration of Benefits
At Least	Less Than	
0	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

Part 23

Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout (2).

39-51-2303. Disqualification for discharge due to misconduct. An individual shall be disqualified for benefits if he has been discharged:

(1) for misconduct connected with his work or affecting his employment until an individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred.

(2) for gross misconduct connected with his work or committed on the employer's premises, as determined by the department, for a period of 12 months.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) Effective April 1, 1977, an individual is disqualified for benefits if he fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept suitable work offered to him which he is physically able and mentally qualified to perform or to return to his customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the department, provided he has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(3) Notwithstanding any other provisions of this chapter, no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) During the first 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers wages equal to the prevailing wage for that area in the individual's customary occupation. After 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the prevailing wage.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2305. Disqualification when unemployment due to stoppage of work. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) wages in lieu of notice or separation or termination allowance;

(b) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(c) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2).

39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(3).

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec.

1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" throughout (2).

39-51-2308. Disqualification because principal occupation is self-employment. Effective April 1, 1977, an individual shall be disqualified for benefits if his principal occupation is self-employment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).

Part 24

Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments
1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum duration thereof or shall refer such claim or any question involved therein to an appeals referee who shall make his decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim shall be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (1).

39-51-2403. Decision of appeals referee. After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 5 days after delivery of such notification or within 7 days after such notification was mailed to his last known address, provided that such period may be extended for good cause.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e).

39-51-2404. Appeal to board. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board. The department will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the department, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).**

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: **En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2407. Procedure for disputed claims to be prescribed by regulation. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

History: **En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: **En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).**

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: **En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof, except in the case of the department when such decision becomes final 20 days following the board's decision, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board. The department shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry or his designee and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the department shall forthwith mail one such copy to each such defendant.

(3) With its answer, the department shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal.

Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section; substituted "commissioner of labor and industry or his designee" for "administrator of the division or the administrator's designee" in the second sentence of (2).

Part 25

Extended Benefits

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator; or

(ii) a week for which there is a state "on" indicator; provided, that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator; or

(ii) the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13 consecutive-week period, as determined by the department on the basis of his reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in his eligibility period.

(5) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided, that for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits;

(b) his benefit year having expired prior to such week, has no or insufficient wages on the basis of which he could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" in (2)(a) and (2)(b).

39-51-2502. National "on" indicator — when. There is a national "on" indicator for a week if the U.S. secretary of labor determines that for such week and for each of the immediately preceding 12 weeks the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded 4 ½ %.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).**

39-51-2503. National "off" indicator — when. There is a national "off" indicator for a week if the U.S. secretary of labor determines that for such week and for each of the immediately preceding 12 weeks the rate of insured unemployment (seasonally adjusted) for all states was less than 4 ½ %.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953;**

amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; and

(2) equaled or exceeded 4%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) was less than 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) was less than 4%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such week:

(a) he is an exhaustee, as defined in 39-51-2501(6);

(b) he is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he is disqualified, he satisfies the requirements for requalification in that part, except that subsections (1), (2), and (4) of 39-51-2304 do not apply to this section; and

(c) he has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(b), an individual is disqualified for extended benefits if he fails without good cause either to apply for available and suitable work, to accept suitable work offered to him, or, when so directed by the department, to return to his customary occupation, if any. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred, with 4 weeks' reduction in benefit duration, as determined by the department, provided he has not left this work under disqualifying circumstances.

(3) For the purposes of subsection (2), the department shall, by rule, define the term "suitable work". Such definition shall be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 99 added subsection (1)(b), relating to disqualification and requalification under part 23 of this chapter; in (1)(c), inserted "other" before "requirements"; deleted ", including not being subject to a disqualification for the receipt of benefits" at the end of (1)(c); added subsections (2) and (3).

Chapter 349 substituted "department" for "division" throughout the section.

Statement of Intent: The statement of intent attached to HB 464 (Ch. 99, L. 1981) provided: "A statement of intent is required for this bill because it delegates rulemaking authority to the Department of Labor and Industry in section 1, subsection (3).

It is the intent of this bill that the Department adopt the same definition for "suitable work" that is used in the federal Emergency Unemployment Compensation Act of 1974, as amended. This is a conformity requirement of the Federal Unemployment Tax Act which is imposed on the states."

The "federal Emergency Unemployment Compensation Act", referred to in this statement of intent, as adopted by the House Labor and Employment Relations Committee, was also referred to in HB 464 as originally introduced but was changed to the "Omnibus Reconciliation Act of 1980, P.L. 96-499" (see subsection (3) of this section) by the House Committee of the Whole.

Effective Date: Section 2, Ch. 99, L. 1981, provided: "This act is effective on passage and approval." Approved March 19, 1981.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 58, L. 1981 (HB 344), read: "An act to limit the payment of extended unemployment insurance benefits to 2 weeks for individuals filing from a state in which extended benefits are not in effect."

Parts 26 through 30 reserved

Part 31

Protection of Rights and Benefits

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the department or board or any member thereof or any duly authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the department or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: **En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void.

History: **En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143.**

Part 32

General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(1) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

(2) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

History: **En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975;**

amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division".

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

39-51-3206. Liability for wrongful or improper receipt of benefits. Any person who, by reason of the nondisclosure or misrepresentation by him or by another of a material fact, irrespective of whether such nondisclosure or misrepresentation was known or fraudulent, has received any sum as benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled in his case or while he was disqualified from receiving benefits shall, in the discretion of the department, either be liable to have such sum deducted from any future benefits payable to him under this chapter or shall be liable to repay to the department for the unemployment insurance fund a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this chapter for the collection of past due contributions. An action for collection of overpaid benefits must be brought within 5 years after the date of such overpayment or it is barred.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department" for "division" throughout the section.

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

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Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

39-71-104. Court to give liberal construction to chapter. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.

39-71-105 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the division of workers' compensation prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving wife or husband;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 25 years who is a full-time student in an accredited school;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer. Any person hauling or assisting in hauling of sugar beets or grains, in case of emergency, is considered engaged in casual employment.

(4) "Child" includes a posthumous child, a dependent stepchild, a child legally adopted prior to the injury, and an illegitimate child legitimized prior to the injury.

(5) "Division" means the division of workers' compensation of the department of labor and industry provided for in 2-15-1702.

(6) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(7) "Husband" or "widower" means only a husband or widower living with or legally entitled to be supported by the deceased at the time of her injury.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Order" means any decision, rule, direction, requirement, or standard of the division or any other determination arrived at or decision made by the division.

(11) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year; provided, that an estimate may be made by the division for any employer starting in business where no average payrolls are available, such estimate to be adjusted by additional payment by the employer or refund by the division, as the case may actually be on December 31 of such current year.

(12) "Permanent partial disability" means a condition resulting from injury as defined in this chapter that results in the actual loss of earnings or earning capability less than total that exists after the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(13) "Permanent total disability" means a condition resulting from injury as defined in this chapter that results in the loss of actual earnings or earning capability that exists after the injured worker is as far restored as the permanent character of the injuries will permit and which results in the worker having no reasonable prospect of finding regular employment of any kind in the normal labor market. Disability shall be supported by a preponderance of medical evidence.

(14) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(15) "The plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(16) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(17) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(18) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(19) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker is as far restored as the permanent character of the injuries will permit. Disability shall be supported by a preponderance of medical evidence.

(20) "Wages" means the average gross earnings received by the employee at the time of the injury for the usual hours of employment in a week, and overtime is not to be considered. Sick leave benefits accrued by employees of public corporations, as defined by subsection (16) of this section, are considered wages.

(21) "Wife" or "widow" means only a wife or widow living with or legally entitled to be supported by the deceased at the time of the injury.

(22) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 47 inserted "Disability shall be supported by a preponderance of medical evidence" in (12), (13), and (19).

Chapter 349 deleted "the division of employment security of" before "the Montana department of labor and industry" in (1).

Short Form Amendment: The Ch. 349, L. 1981 amendment of this section is a short form amendment. See compiler's comment to Title 2, ch. 15, part 17.

39-71-117. Employer defined. "Employer" means the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part).

39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116(3) are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-302 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this chapter until such notice has been given. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing employee to be not less than $900 a month

and not more than 1 ½ times the average weekly wage as defined in this chapter.

History: **En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter" for "$900 per month" in (2).

39-71-119. Injury or injured defined. "Injury" or "injured" means:

(1) a tangible happening of a traumatic nature from an unexpected cause or unusual strain resulting in either external or internal physical harm and such physical condition as a result therefrom and excluding disease not traceable to injury, except as provided in subsection (2) of this section;

(2) cardiovascular or pulmonary or respiratory diseases contracted by a paid firefighter employed by a municipality, village, or fire district as a regular member of a lawfully established fire department, which diseases are caused by overexertion in times of stress or danger in the course of his employment by proximate exposure or by cumulative exposure over a period of 4 years or more to heat, smoke, chemical fumes, or other toxic gases. Nothing herein shall be construed to exclude any other working person who suffers a cardiovascular, pulmonary, or respiratory disease while in the course and scope of his employment.

(3) death resulting from injury.

History: **Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M. 1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1.**

39-71-120. Independent contractor defined. An "independent contractor" is one who renders service in the course of an occupation and:

(1) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2) is engaged in an independently established trade, occupation, profession, or business.

History: **En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1.**

39-71-121. Disability defined. A worker is disabled when his ability to engage in gainful employment is diminished as a result of impairment, which in turn may be combined with such factors as the worker's physical condition, age, education, work history, and other factors affecting the worker's ability to engage in gainful employment. Disability is not a purely medical condition. Disability may be temporary total, permanent total, or permanent partial as defined in 39-71-116.

History: **En. Sec. 2, Ch. 47, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 47, L. 1981 (SB 128), read: "An act requiring that a disability be supported by a preponderance of medical evidence; defining impairment and disability; amending section 39-71-116, MCA."

39-71-122. Impairment defined. Impairment means any anatomic or functional abnormality or loss of bodily function. Impairment refers to functional use of the body and is a purely medical condition. Permanent impairment is any anatomic or functional abnormality or loss of bodily function after the maximum medical rehabilitation has been achieved. The anatomic or functional abnormality or loss must be considered stable by the physician at the time the impairment rating evaluation is made. An impairment rating is purely a medical determination. Impairment may or may not result in disability.

History: **En. Sec. 3, Ch. 47, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 47, L. 1981 (SB 128), read: "An act requiring that a disability be supported by a preponderance of medical evidence; defining impairment and disability; amending section 39-71-116, MCA."

Part 2

Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the division shall be deposited in the state treasury to the credit of the workers' compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501

through 2-18-503, as amended, incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration money shall be made after being approved by the division upon claim therefor.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979.

39-71-202. Office of division. The division shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111.

39-71-203. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814.

39-71-204. Rescission, alteration, or amendment by division of its orders, decisions, or awards — limitation — effect. (1) Except as provided in subsection (2), the division shall have continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) The division or the workers' compensation judge shall not have power to rescind, alter, or amend any final settlement or award of compensation more than 4 years after the same has been approved by the division. Rescinding, altering, or amending a final settlement within the 4-year period shall be by agreement between the claimant and the insurer. If the claimant and the insurer cannot agree, the dispute shall be considered a dispute for which the workers' compensation judge has jurisdiction to make a determination. Except as provided in 39-71-2908, the division or the workers' compensation judge shall not have the power to rescind, alter, or amend any order approving a full and final compromise settlement of compensation.

(3) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award shall have the same effect as original orders or awards.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979.

39-71-205. Division authorized to charge certain fees — disposition of. (1) The division shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the administrator.

(2) The division shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the earmarked revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Rewrote (1) to provide for a fee to cover costs rather than 15 cents per folio for noncertified documents and 20 cents per folio for certified documents.

39-71-206. Legal advisers of division. (1) The attorney general shall be the legal adviser of the division and shall represent it in all proceedings whenever so requested by the division or any member thereof.

(2) The division may, in the investigation and defense of cases under plan No. 3 of the Workers' Compensation Act, employ such other attorney or legal adviser as it deems necessary and pay for the same out of the industrial insurance account in the agency fund.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120.

39-71-207. Merit system. Employees of the division, except the administrator, are included within the joint merit system if such inclusion is required for the receipt of federal funds by 29 CFR 1902.3(h) or by any other federal law or regulation.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121.

39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the division and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979.

39-71-209. Publication of reports and bulletins authorized. The division shall have the power and authority to publish and distribute at its discretion from time to time, in addition to its report required by 2-7-102, such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118.

39-71-210. Annual report of division — copies for general distribution. The division shall, after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of the report shall be printed for general distribution.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979.

39-71-211 through 39-71-220 reserved.

39-71-221. Public records of division — right to inspect. Each person has a right to inspect any public record of the division, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844.

39-71-222. Duties of administrator regarding inspection and examination of records. The administrator of the division shall furnish proper and reasonable opportunities for inspection and examination of the records under his control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The administrator may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of his duties.

History: En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845.

39-71-223. Certified copies of public records — fees. (1) The administrator of the division shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The administrator of the division may establish fees reasonably calculated to reimburse the division for its actual cost in making such records available.

History: En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the division contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the administrator of the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847.

Part 3

Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the division, certified to by a member of the division or by the secretary under the official seal of the division to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the division, or by the secretary under the official seal of the division, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818.

39-71-302. What included in computing payroll. In computing the payroll, the entire compensation received by every worker employed under this chapter is included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979.

39-71-303. Work paid for in property other than money — wages to be determined by division. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the division in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part).

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal. The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979.

Compiler's Comments

Composite section. This section was amended by Ch. 103 and Ch. 397, L. 1979, and a composite was prepared by the Code Commissioner, 1979. Ch. 397 was a Code Commissioner bill and was not intended to make substantive changes in the law. Consequently a conflict of language between Ch. 103 and Ch. 641 has been resolved in favor of the language used in Ch. 103.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Plan one employers and plan two insurers to file duplicate receipts paid for injuries and statements of medical expenditures. Every employer coming under the provisions of compensation plan No. 1 and every insurer coming under the provisions of compensation plan No. 2 shall, on or before the 15th day of each and every month, file with the division:

(1) duplicate receipts for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979.

39-71-307. Employers and insurers to file reports of accidents. (1) Every employer of labor and every insurer is hereby required to file with the division, under such rules as the division may from time to time make, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to such person. Such reports shall be furnished to the division in such form and such detail as the division shall from time to time prescribe and shall make specific answers to all questions required by the division under its rules; except, in case he is unable to answer any such questions, a good and sufficient reason shall be given for such failure.

(2) Every insurance company transacting business under this chapter shall, at the time and in the manner prescribed by the division, make and file with the division such reports of accidents as the division may require.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23, L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010.

39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by division. Whenever any public corporation insured by the state compensation insurance fund neglects or refuses to file prescribed payroll reports of its employees, the division may levy an arbitrary assessment upon such public corporation in an amount of $75 for each such assessment, which assessments shall be collected in the manner provided in this chapter for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "insured by the state compensation insurance fund"; substituted "file prescribed payroll reports" for "file with the division monthly payroll report"; and increased the assessment amount from $25 to $75.

39-71-309. Hospitals to submit schedule of fees and charges — effective period of schedule — when to be submitted. All hospitals must submit to the division a schedule of fees and charges for treatment of injured workers to be in effect for at least a 12-month period unless the division and the hospital agree to interim amendments of the schedule. The schedule must be submitted at least 30 days prior to its effective date and may not exceed the charges prevailing in the hospital for similar treatment of private patients.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3);

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership;

(e) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(f) any person performing services in return for aid or sustenance only;

(g) employment with any railroad engaged in interstate commerce, except that railroad construction work shall be included in and subject to the provisions of this chapter.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979.

39-71-402. Extraterritorial application and reciprocity. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5).

39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations. (1) Where a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3 shall be exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency shall be considered to be ordinary and necessary expense of the agency, and the agency shall make appropriation of and pay such sums into the state compensation insurance fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate such ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, employer; plan No. 2, insurer; or plan No. 3, state insurance fund; separately or jointly with any other public corporation, other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance. A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund.

(4) All money in the fund established under subsection (2) not needed to meet immediate expenditures must be invested by the governing body of the public corporation, and all proceeds of the investment shall be credited to the fund.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971;

amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "state compensation insurance fund" for "accident or administration fund, as the case may be" in (1).

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

39-71-406. Deduction from wages of any part of premium a misdemeanor — hospital contributions not prohibited. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor, except that nothing in this section shall be construed as prohibiting contributions by employees to a hospital fund, as elsewhere in this chapter provided.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979.

39-71-407. Liability of insurers. Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1).

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

39-71-410. Employees bound by plan adopted by employer — election not to be bound by corporate officers. (1) Every employee whose employer is bound by the provisions of this chapter is subject to and bound by the provisions of that plan of compensation adopted by his employer, except that pursuant to such rules as the division shall from time to time promulgate and subject in all cases to the review of the division, officers of private corporations may elect not to be bound as employees under this chapter by a written notice in the form provided by the division, served in the following manner:

(a) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer;

(b) if the employer has elected to be bound by the provisions of compensation plan No. 2, by delivering the notice to the board of directors of the employer or the insurer;

(c) if the employer has elected to be bound or is bound by the provisions of compensation plan No. 3, by delivering the notice to the division.

(2) The appointment or election of an officer of a corporation for the purpose of excluding an employee from coverage under this chapter does not entitle such officer to elect not to be bound as an employee under this chapter. In any case, the notice must be signed by the officer under oath or equivalent affirmation and is subject to the penalties for false swearing.

(3) The division shall review any election by officers of private corporations not to be bound as an employee to assure compliance with this chapter.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

History: **En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2.**

Part 5

Uninsured Employers

39-71-501. Definition of uninsured employer. For the purposes of this part, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979.**

39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3.

History: **En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).**

39-71-503. Administration of fund. (1) The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part).

39-71-504. Funding of fund. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection may not exceed $30,000.

(3) The division may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979.

39-71-507. Division to order uninsured employer to cease operations — noncompliance with order a misdemeanor. When the division discovers an uninsured employer, it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6).

39-71-508. Election of uninsured employee to take under the fund or bring action against employer — election binding. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may elect to either receive benefits from the uninsured employers' fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part).

39-71-509. Election to bring action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part).

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979.

Part 6

Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims shall be forever barred unless presented in writing to the employer, the insurer, or the division, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

(2) The division may, upon a reasonable showing by the claimant of lack of knowledge of disability, waive the time requirement up to an additional 24 months.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

39-71-603. Notice of injuries other than death to be submitted within sixty days. No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979.

39-71-604. Application for compensation. (1) Where a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the division all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) Where death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the division. The claim must be accompanied with proof of death and proof of

relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the division.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of his employer or the insurer, submit from time to time to examination by a physician, who shall be provided and paid for by such employer or insurer, and shall likewise submit to examination from time to time by any physician selected by the division or any member or examiner or referee thereof.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician provided and paid for by himself present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician employed by the employer, the insurer, or the division who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of his injury or disability, if any, the division, at the request of the claimant, employer, or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician making the examination shall file a written report of his findings with the division for its use in the determination of the controversy involved. The division shall pay the physician for the examination and shall be reimbursed by the party who requested it.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1.

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the division in writing of such denial.

(2) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the division and in the discretion of the division, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part).

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the division, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part).

39-71-609. Denial of claim after payments made or termination of benefits by insurer — fourteen days' notice required. If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979.

39-71-610. Termination of benefits by insurer — division order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the division may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the division, the insurer has the right to be reimbursed for such payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617.

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. In the event an insurer denies liability for a claim for compensation or terminates compensation benefits and the claim is later adjudged compensable by the workers' compensation judge or on appeal, the insurer shall pay reasonable costs and attorneys' fees as established by the workers' compensation judge.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979.

39-71-612. Costs and attorneys' fees payable based on difference between amount paid by insurer and amount later found compensable. (1) If an employer or insurer pays or tenders payment of compensation under chapter 71 or 72 of this title, but controversy relates to the amount of compensation due and the settlement or award is greater than the amount paid or tendered by the employer or insurer, a reasonable attorney's fee as established by the division or the workers' compensation judge if the case has gone to a hearing, based solely upon the difference between the amount settled for or awarded and the amount tendered or paid, may be awarded in addition to the amount of compensation.

(2) When an attorney's fee is awarded against an employer or insurer under this section there may be further assessed against the employer or insurer reasonable costs, fees, and mileage for necessary witnesses attending a hearing on the claimant's behalf. Both the necessity for the witness and the reasonableness of the fees must be approved by the division or the workers' compensation judge.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618.

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the division a contract of employment stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The administrator of the division may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the administrator shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the administrator may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619.

Part 7

Compensation and Benefits Generally

39-71-701. Compensation for injuries producing temporary total disability. (1) Weekly compensation benefits for injury producing total temporary disability shall be 66 ⅔ % of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed $110 beginning July 1, 1973. Beginning July 1, 1974, the maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total temporary disability benefits shall be paid for the duration of the worker's temporary disability.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "disability" before "benefits" near beginning of (2) and added the final phrase beginning with "which amount...".

39-71-702. Compensation for injuries producing total permanent disability. (1) Weekly compensation benefits for injury producing total permanent disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage. Total permanent disability benefits shall be paid for the duration of the worker's total permanent disability.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "disability" before "benefits" near beginning of (2) and added the final phrase beginning with "which amount...".

39-71-703. Compensation for injuries causing partial disability. (1) Weekly compensation benefits for injury producing partial disability shall be 66 ⅔% of the actual diminution in the worker's earning capacity measured in dollars, subject to a maximum weekly compensation of one-half the state's average weekly wage.

(2) The compensation shall be paid during the period of disability, not exceeding, however, 500 weeks in cases of partial disability. However, compensation for partial disability resulting from the loss of or injury to any member shall not be payable for a greater number of weeks than is specified in 39-71-705 for the loss of the member.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1.

39-71-704. Payment of medical, hospital, and related services. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the employer or insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

(b) The employer or insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(2) Fees and charges for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, shall be established by the workers' compensation division based on the 90th percentile of usual and customary charges of the medical specialty involved based upon the most recent 6-months data as determined in January and July of each year.

History: **En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981.**

Compiler's Comments

1981 Amendment: Renumbered subsections (1) and (2) as (1)(a) and (1)(b); added subsection (2).

39-71-705. Compensation for loss of certain body members or loss of hearing. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of a member shall be paid at the weekly rate provided in 39-71-703 and shall be paid for the following periods:

one arm at or near shoulder	280 weeks
one arm at the elbow	240 weeks
one arm between wrist and elbow	220 weeks
one hand	200 weeks
one thumb and the metacarpal bone thereof	75 weeks
one thumb at the proximal joint	37 weeks
one thumb at the second distal joint	25 weeks
one first finger and the metacarpal bone thereof	40 weeks
one first finger at the proximal joint	30 weeks
one first finger at the second joint	22 weeks
one first finger at the distal joint	15 weeks
one second finger and the metacarpal bone thereof	37 weeks
one second finger at the proximal joint	20 weeks
one second finger at the second joint	15 weeks
one second finger at the distal joint	8 weeks
one third finger and the metacarpal bone thereof	25 weeks
one third finger at the proximal joint	15 weeks
one third finger at the second joint	10 weeks
one third finger at the distal joint	5 weeks
one fourth finger and the metacarpal bone thereof	15 weeks
one fourth finger at the proximal joint	11 weeks
one fourth finger at the second joint	8 weeks
one fourth finger at the distal joint	6 weeks
one leg at or near the hip joint as to preclude the use of an artificial limb	300 weeks
one leg at or above the knee where stump remains sufficient to permit the use of an artificial limb	200 weeks
one leg between knee and ankle	190 weeks
one foot at the ankle	180 weeks

one great toe with the metatarsal bone thereof	37 weeks
one great toe at the proximal joint	18 weeks
one great toe at the second joint	12 weeks
one toe other than the great toe with the metatarsal bone thereof	16 weeks
one toe other than the great toe at the proximal joint	8 weeks
one toe other than the great toe at second or distal joint	5 weeks
one eye by enucleation	165 weeks
Total blindness of one eye	140 weeks
Total loss of hearing, one ear	40 weeks
Total loss of hearing, both ears	200 weeks

(2) The loss of both hands, both arms, both feet, both legs, both eyes, or any two thereof in one accident, in the absence of conclusive proof to the contrary, shall constitute total disability, permanent in character. However, the percentage of permanent disability caused by any single accident or injury shall be so computed as to cover the permanent disability caused by that particular injury without reference to any previous physical ailment or defect or to any injury previously suffered or any permanent disability caused thereby.

(3) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Compensation for permanent injury to a member less than loss. (1) In all cases of permanent injury to a member less than loss of the member, compensation shall be paid for total temporary disability without limitation as to time under 39-71-701. In addition thereto, indemnity benefits for permanent disability to a member or members shall be proportionate to loss or loss of use of the member or members at the weekly rate provided in 39-71-703. In all other cases of permanent injury less than total not included in the schedule provided for in 39-71-705, the compensation for partial disability shall bear such relation to the periods stated in the schedule provided for in 39-71-705 as the disabilities bear to those produced by the injuries named in the schedule or to partial disability (500 weeks).

(2) Indemnity benefits for permanent total loss of use of a member shall be the same as for loss of the member.

(3) For the purpose of this section and 39-71-705, the complete paralysis of an arm, hand, foot, or leg shall be considered the loss of such member. For the purpose of this section and 39-71-705, the complete paralysis of both arms, both hands, both feet, both legs, or any two of them shall be considered the loss of such members.

(4) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177,

L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Compensation for loss of vision. (1) In addition to temporary total disability benefits allowed in this chapter, indemnity benefits for loss of vision, where central visual acuity does not exceed 20/200 in the better eye with correcting lenses or the widest diameter of the visual field subtends an angle no greater than 20 degrees, shall be paid the same as for loss of the eye.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) The division may award proper and equitable indemnity benefits for serious face, head, or neck disfigurement, not to exceed $2,500, in addition to any other indemnity benefits payable under 39-71-705, 39-71-706, or 39-71-707.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services and of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-709. Partial disability benefits — indemnity benefits — election. (1) In addition to temporary total disability benefits allowed in this chapter, a worker whose injury results in partial disability is entitled to receive compensation under 39-71-703 or indemnity benefits under 39-71-705 through 39-71-708.

(2) A worker who has elected to proceed under 39-71-705 through 39-71-708 may withdraw his election at any time and shall be entitled to compensation under 39-71-703 during the remaining period of his disability; provided, however, that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

(3) A worker who has elected to proceed under 39-71-703 may withdraw his election at any time and is entitled to receive indemnity benefits under 39-71-705 through 39-71-708; provided, however, that he shall not be entitled to a greater benefit, including compensation paid under 39-71-703, than he

would have received if he had proceeded exclusively under 39-71-705 through 39-71-708 and provided further that he shall not be entitled to receive benefits under both 39-71-703 and 39-71-705 through 39-71-708 during any month.

History: **En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.**

39-71-710. Termination of total disability benefits upon retirement. If a claimant is receiving total disability compensation benefits and the claimant receives retirement social security benefits or disability social security benefits paid to the claimant are converted by law to retirement benefits, the claimant is considered to be retired and no longer in the open labor market. When the claimant is considered retired, the liability of the insurer is ended for payment of such compensation benefits. This section does not apply to permanent partial disability benefits. Medical benefits are expressly reserved to the claimant.

History: **En. Sec. 1, Ch. 386, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 386, L. 1981 (SB 64), read: "An act to provide that total disability compensation benefits will terminate when a claimant receives retirement social security benefits or when disability social security benefits are converted to retirement benefits."

39-71-711 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death. (1) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased, as the case may be, is entitled to the same compensation as though the death occurred immediately following the injury, but the period during which the death benefit is paid shall be reduced by the period during or for which compensation was paid for the injury.

(2) To beneficiaries as defined in subsections (2)(a) through (2)(d) of 39-71-116, weekly compensation benefits for injury causing death are computed at 66 ⅔% of the decedent's wages. The maximum weekly compensation benefits may not exceed the state's average weekly wage. The minimum weekly compensation for death is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66 ⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a widow or widower for life or until remarriage, and in the event of remarriage, 2 years' benefits must be paid in a lump sum to the widow or widower.

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p. 92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the division.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part).

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this chapter shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the division. Such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular agent within the United States representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the division, as the case may be.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507.

39-71-725. Payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $1,400, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: **En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981.**

Compiler's Comments

1981 Amendment: Increased maximum burial expense from $1,100 to $1,400.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: **En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).**

39-71-727 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. No compensation may be paid for the first 5 days loss of wages due to an injury. If loss of wages continues for more than 5 days, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury.

History: **En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975; amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979.**

39-71-737. Compensation to run consecutively. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period.

History: **En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part).**

39-71-738. Adjustment of compensation in case of further injuries. Should a further accident occur to a worker who is already receiving compensation hereunder or who has been previously the recipient of a payment under this chapter, his further compensation is adjusted according to the other provisions of this chapter and with regard to his past receipt of compensation.

History: **En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.**

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements and lump-sum payments — division approval required. The biweekly payments provided for in this chapter may be converted, in whole or in part, into a lump-sum payment. Such conversion can only be made upon the written application of the injured worker or the worker's beneficiary, with the concurrence of the insurer, and shall rest in the discretion of the division, both as to the amount of such lump-sum payment and the advisability of such conversion. The division is hereby vested with full power, authority, and jurisdiction to allow and approve compromises of claims under this chapter. All settlements and compromises of compensation provided in this chapter are void without the approval of the division. Approval of the division must be in writing. The division shall directly notify every claimant of any division order approving or denying a claimant's settlement or compromise of a claim. A controversy between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which the workers' compensation judge has jurisdiction to make a determination.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or division, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508.

39-71-743. Assignment or attachment of payments. No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801.

Part 8

Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

39-71-802. Definitions. (1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

(2) "Noise" means sound capable of producing occupational deafness.

(3) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing which is governed by the specific loss schedule provided for in 39-71-705.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8).

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 ½% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except, that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the division of workers' compensation to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979.**

39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the division may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the administrator, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the administrator may at his discretion suspend or reduce further collection of assessments for a period of time determined by the administrator.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979.**

39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979.**

39-71-904. Rules for certification. The administrator of the division shall promulgate rules for certification of vocationally handicapped persons.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4).**

39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the division on forms furnished by the division. The division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979.**

39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with division — effect of

failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the division, on forms furnished by the division, all pertinent information requested by the division. The division shall acknowledge receipt of the information. Failure to file the required information with the division within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979.**

39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — employer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the employer for payment of compensation, for furnished medical care, and burial as provided in this chapter is limited to those benefits occurring during the period of 104 weeks after the date of injury. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979.**

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the employer, carrier, or the industrial insurance fund, as the case may be, shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the employer, carrier, or industrial insurance fund has regarding the accident and the nature and extent of the injury and disability.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979.**

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the carrier of its intent to dispute the payment of compensation, medical, and burial benefits, the employer, carrier, or industrial insurance fund shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid that pertain to the period beyond 104 weeks after the date of the injury. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the carrier of a dispute as to payment of benefits. The liability of the fund to reimburse the employer, carrier, or the industrial insurance fund shall be suspended 30 days thereafter until the controversy is determined.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7).**

39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the division shall hold a hearing and resolve all disputes. On motion made in writing by the employer, carrier, or industrial insurance fund, the administrator shall join the fund as a party defendant.

(2) The division, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the name of the employee and the employer and the date of the alleged injury or disability. The fund named as a defendant shall have 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the employer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the employer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the employer and the fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979.**

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the employer, carrier, or industrial insurance fund to make payments on behalf of the fund does not impose an independent liability on the employer, carrier, or industrial insurance fund.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

39-71-913. Payments by fund directly to persons entitled. If the employer, carrier, or the industrial insurance fund does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

39-71-914. Conversion of benefits payable from fund to lump sum. Benefits payable from the fund may be converted into a lump-sum payment only upon a substantial showing for an equitable cause, the advisability of the lump-sum payment to be determined and approved by the administrator of the division.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Referral of disabled workers to department of social and rehabilitation services for vocational rehabilitation. The division shall refer to the department of social and rehabilitation services workers who have become permanently disabled as the result of injuries sustained within the scope and course of employment by an employer enrolled under the Workers' Compensation Act and who, in the opinion of the division, can be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the injured workers under the provisions of Title 53, chapter 7, parts 1 and 2.

History: En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.

39-71-1002. Certification of department's determination to division — review of award. When the department of social and rehabilitation services has provided all feasible vocational rehabilitation to an injured worker or has determined that vocational rehabilitation is not possible or feasible, it shall certify its determination to the division, at which time the division shall reconsider and review any previous award of compensation to the injured worker which is then in effect.

History: En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.

39-71-1003. Eligibility for benefits under chapter not affected — other expenses payable. The eligibility of any injured worker to receive other benefits under the Workers' Compensation Act is in no way affected by his entrance upon a course of vocational rehabilitation as herein provided, but he may be paid, in addition thereto, upon the certification of the department of social and rehabilitation services from funds herein provided:

(1) his actual and necessary travel expenses from his place of residence to the place of training and return;

(2) his living expenses while in training in an amount not in excess of $50 per week; and

(3) his expenses for tuition, books, and necessary equipment in training.

History: En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979.

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in the agency fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the division, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the division, an amount to be determined by the division, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance account in the agency fund and the occupational disease account in the agency fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the agency fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the division, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the division or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406.

39-71-1005. Required rehabilitation. (1) The division may, under the provisions and procedures set forth in this section, require a claimant to pursue a vocational rehabilitation course in order to be entitled to continued workers' compensation benefits.

(2) The division shall make a determination, on a case-by-case basis, of the availability and appropriateness of a rehabilitation program for a claimant receiving workers' compensation benefits. The determination shall be made only after consultation with the department of social and rehabilitation services and division-sanctioned rehabilitation committees that are able to provide competent information regarding the rehabilitation of a claimant.

(3) If the division determines that a rehabilitation program is feasible and appropriate for a claimant receiving workers' compensation benefits, the division must require the claimant to enter into the program. If a claimant refuses to enter the program, the claimant's biweekly benefits may be ordered terminated.

(4) Any order terminating benefits may only be issued after the claimant has an opportunity for a hearing before a workers' compensation judge regarding the feasibility and appropriateness of the rehabilitation program. After the hearing, the judge may approve or deny the division's determination regarding the feasibility or appropriateness of the proposed rehabilitation program.

(5) If a claimant does not request a hearing and benefits are terminated, and subsequently the claimant requests a hearing, the claimant is entitled to retroactive weekly benefits for a maximum of 8 weeks from the date of request for hearing, and to continued weekly benefits pending a decision by the workers' compensation judge.

History: En. Sec. 1, Ch. 123, L. 1979.

Parts 11 through 20 reserved

Part 21

Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the division of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the division, make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902.

39-71-2103. Employer permitted to carry on business and settle directly with employee. If such employer making such election shall be found by the division to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the division shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part).

39-71-2104. Renewal of application. Every employer, so long as he continues in his employment and so long as he continues to be bound by compensation plan No. 1, shall, at least 30 days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the division may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part).

39-71-2105. Additional proof of solvency — revocation of order. The division may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to such employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904.

39-71-2106. Requiring security of employer. (1) If the division finds that an employer does not have the financial responsibility for the payment of the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission, the division must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security for such payment, which security must be in such an amount as the division finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(2) The security must be deposited with the division and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the division in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or evidence of indebtedness of any individuals or corporations which the division deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the division as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(3) The division is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the division for the protection and guaranty of the payment of such liability in such sum as the division may direct. However, if sufficient securities are already on deposit with the division or if the division determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907.

39-71-2108. Failure of employer to pay compensation — duty of division. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the division shall, upon demand of the person to whom compensation is due, apply any deposits made with the division to the payment of the same, and the division shall take the proper steps to convert any securities on deposit with the division or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the division shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the division shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906.

39-71-2109. When employer may be relieved from liability. Any employer against whom liability may exist for compensation under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at 5% per annum, with the division; or

(2) purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908.

Part 22

Compensation Plan Number Two

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959;

amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by division. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the division and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the division.

(2) The division may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this section.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

39-71-2205. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required. The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part).

39-71-2206. Deposits by insurer with division to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, the insurer must deposit with the division bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the division in an amount not less than $5,000 or more than $100,000, as the division may determine. If any insurer fails to discharge any liability after the amount thereof is determined by the division and within the time limited by the division, the division shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give the division the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the division for the protection and guarantee of the payment of such liability in such sum as the division may direct. However, if the division considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the division as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the division as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings must upon demand be delivered to such depositor. The division and its bondsmen are liable for the value and safekeeping of such deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979.

39-71-2207. How insurer relieved from liability. Any insurer against whom liability may exist for compensation under this chapter may, with the approval of the division, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists, assuming interest at 5% per annum, with the division; or

(2) purchasing an annuity within the limitations provided by law in any insurance company granting annuities and authorized to transact business in this state, subject to the approval of the division.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008.

Part 23

Compensation Plan Number Three

39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. General requirements for electing coverage under plan. Every employer subject to the provisions of compensation plan No. 3 shall at the times and in the manner prescribed by the division pay to the division a premium based on a percentage of his payroll as determined by the division, which shall be a member of a rating organization in accordance with the provisions of this chapter.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101.

39-71-2303. Manner of electing — contract or policy of insurance — payment of premium. The division shall prescribe the procedure by which employers may elect to be bound by compensation plan No. 3, the effective time of such election, and the manner in which such election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 shall receive from the division a contract or policy of insurance in a form approved by the division. The premium thereon shall be paid by the employer to the division at such times as the division shall prescribe and shall be paid over by the division to the state treasurer to the credit of the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103.

39-71-2304. Determination of rates and classifications by division. (1) The division is hereby given full power and authority to determine premium rates and classifications as in its judgment and experience and as a member of a rating organization as is otherwise provided for in this chapter may be necessary or expedient, provided that no change in the classification or rates prescribed shall be effective until 30 days after the date of the order making such change.

(2) The industrial insurance program shall be neither more nor less than self-supporting. Employments affected by the provisions hereof shall be divided by the division, as a member of a rating organization, into classes, whose rates may be readjusted at such times as the division as a member of such rating organization may actuarially determine. Separate accounts shall be kept of the amounts collected and expended in each class for actuarially determining rates, but for payment of compensation and dividends, the industrial insurance account shall be one and indivisible.

(3) The division as a member of such rating organization shall determine the hazards of the different classes of occupations or industries and fix the premiums therefor at the lowest rate consistent with maintenance of an actuarially sound industrial insurance fund and the creation of actuarially sound surplus and reserves, and for such purpose may adopt a system of schedule rating in such a manner as to take account of the peculiar hazard of each risk and shall utilize the experience and information afforded to it as a member of such rating organization.

(4) In addition, compensation plan No. 3 shall use an experience rating system for employers enrolled under it. This system shall reward employers with a better than average safety record, penalize employers with a worse than average safety record, and may provide for premium volume discount.

(5) The division in fixing rates shall provide for the expenses of administering the industrial insurance account allowed by law, the disbursements on account of injuries and deaths of employees in each class, an actuarially sound catastrophe reserve, reserves actuarially determined to meet anticipated and unexpected losses, and such other reserves and surplus as may be determined by the division as a member of such rating organization. The amounts of such reserves and surplus shall be as determined from time to time by the division to be adequate but not excessive for the purposes intended.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4).

39-71-2305. Advanced rate for dangerous places of employment. If, by reason of poor or careless management or otherwise, any place of employment is unduly dangerous in comparison with other like places of employment and the employer operating the same has not complied with the safety provisions of the Montana Safety Act and the employer is under compensation plan No. 3, the division, in addition to any other penalty provided, shall advance the rate upon such place of employment 50%. The advanced rate shall continue and be in force until the place of employment has ceased to be unduly dangerous in comparison with other like places of employment and the employer has obtained a certificate of the division.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1.

39-71-2306. State fund authorized to charge interest. The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Cancellation of coverage under plan for default — thirty days' notice required. The division is hereby authorized in its discretion to cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the division makes an order canceling an employer's right for failure to pay premiums, the division shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer shall have the same status as an employer who is not enrolled under the Workers' Compensation Act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

39-71-2308. Collection in case of default. (1) If any employer under plan No. 3 shall default in any payment to the division, the sum due may be collected by an action at law in the name of the state, and such right of action shall be cumulative.

(2) When an employer's right to operate has been canceled by the division for failure to pay premiums and when the division in its discretion finds that the property and assets of the employer are not sufficient to pay the premiums, the division may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part).

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311 through 39-71-2320 reserved.

39-71-2321. What to be deposited in industrial insurance account. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the fund, and securities acquired by or through use of money shall be deposited in the industrial insurance account in the agency fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2).

39-71-2322. Money in industrial insurance account held in trust — disposition of funds upon repeal of chapter. The moneys coming into the industrial insurance account in the agency fund shall be held in trust for the purpose for which such moneys were collected, and if this chapter shall be hereafter repealed, such moneys shall be subject to such disposition as may be provided by the legislature repealing this chapter. In default of such legislative provision, distribution thereof shall be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840.

39-71-2323. Surplus in industrial insurance account — payment of dividends. If at the end of any fiscal year there exists in the industrial insurance account in the agency fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the division may declare a dividend in such manner as the rules of the division may prescribe to those employers who have paid premiums into the industrial insurance account in the agency fund in excess of liabilities chargeable to them in the account in the agency fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the division shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110.

39-71-2324. Investment of reserve — payment of installments. The division shall turn over the reserve to the board of investments to be invested, and the same shall be invested by the board of investments as part of the long-term investment fund and out of the same and its earnings shall be paid the monthly installments and any lump sum then or thereafter arranged for. However, when there is sufficient money in the industrial insurance account in the agency fund to meet such compensation payments, any surplus remaining may be invested as specified in this section.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112.

39-71-2325. Division to keep accounts of segregations. The division shall keep an accurate account of all such segregations of the industrial insurance account in the agency fund and shall divert from the account any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113.

39-71-2326. Disbursements out of industrial accident account — employer to pay warrant if funds insufficient. Disbursements out of the industrial insurance account in the agency fund shall be made by the division. If at any time there is not sufficient money in the account with which to pay any warrants drawn thereon, the employer on account of whose workers the warrant was drawn shall pay the same, and upon his next contribution to the account, he shall be credited with the amount so paid, with interest thereon at the rate of 6% per annum from the date of such payment to the date upon which the next assessment becomes payable; and if the amount of the credit exceeds the amount of such assessment, he shall have a warrant upon such account for the excess; and if the warrant is not paid for want of funds, it shall be credited to the employer and be applied upon succeeding assessments.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122.

39-71-2327. Earnings of industrial insurance account to be credited to account — improper use a felony. All earnings made by the industrial insurance account in the agency fund by reason of interest paid for the deposit thereof or otherwise shall be credited to and become a part of the account, and the making of profit, either directly or indirectly, by any person out of the use of the account shall constitute a felony and on conviction thereof shall subject the person making such profit to imprisonment in the state penitentiary for a term not exceeding 2 years or a fine not exceeding $5,000 or both such fine and imprisonment.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123.

Parts 24 through 28 reserved

Part 29

Workers' Compensation Judge

39-71-2901. Location of office. The principal office of the workers' compensation judge shall be in the city of Helena.

History: En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850.

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.

39-71-2903. Administrative procedure act applicable — judge not bound by rules of evidence. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1).

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. The workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed against an insurer for disputes arising under chapter 71.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979.

39-71-2906. Nominal disability awards. The judge may grant nominal disability awards in cases where it is found that an accident has occurred in the course and scope of employment but no disability has resulted therefrom.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).

39-71-2907. Increase in award for unreasonable delay or refusal to pay. When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant, between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits, may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

History: En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979.

39-71-2908. Review of orders allowing compromise settlements of claims. All orders allowing full and final compromise settlements of workers' compensation claims shall be immediately referred to the workers' compensation judge, and the judge may, within 10 days of the judge's receipt of an order, disapprove an order allowing a full and final compromise settlement.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).

39-71-2909. Authority to review, diminish, or increase awards — limitation. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge or benefits received by a claimant through settlement agreements. However, the judge may not change any final settlement or award of compensation more than 4 years after the settlement has been approved by the division or any order approving a full and final compromise settlement of compensation.

History: En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979.

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

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Section

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Part 1

General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116(2).

(2) "Child" is as defined in 39-71-116(4).

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the normal labor market. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 39-71-116(5).

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Husband" is as defined in 39-71-116(7).

(8) "Independent contractor" is as defined in 39-71-120.

(9) "Insurer" is as defined in 39-71-116(8).

(10) "Invalid" is as defined in 39-71-116(9).

(11) "Occupational disease" means all diseases arising out of or contracted from and in the course of employment.

(12) "Order" is as defined in 39-71-116(10).

(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(15) "Wages" is as defined in 39-71-116(20).

(16) "Wife" is as defined in 39-71-116(21).

(17) "Year" is as defined in 39-71-116(6) and 39-71-116(22).

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.

39-72-104. Chapter to be liberally construed. Whenever this chapter or any part or section thereof is interpreted by a court, it shall be liberally construed by such court.

History: En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.

Part 2

Administrative Provisions

39-72-201. Administration of chapter. This chapter shall be administered by the division of workers' compensation.

History: **En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302.**

39-72-202. Powers of division. The division is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: **En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352.**

39-72-203. Division to adopt rules. Subject to the provisions of this chapter, the division shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: **En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345.**

39-72-204. Claim forms to be prescribed by division. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the division and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: **En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346.**

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: **En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.**

39-72-206. Legal action by division. Upon request of the division, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the division in its official capacity. The division may compromise any action brought under this chapter.

History: **En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343.**

Part 3

Coverage and Liability

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: **En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).**

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease, but in the case of silicosis, the only employer liable shall be the employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust for a period of 90 actual workshifts or more after July 1, 1958.

(2) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, is liable for and must secure the payment of all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine, and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310.

39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules. (1) An employer may give, within 2 weeks of the beginning of employment, a physical examination to an applicant for employment. Where an applicant for employment, whether he has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, the employer is not liable under this chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of the disease or diseases if a report of the medical examination is approved by the division as provided in this section.

(2) The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the division by the employer within 15 days after the examination. With the medical report and x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(3) The division shall submit the medical report and x-rays, if any, to a physician of its choice, and the physician shall report to the division his finding as to whether the medical report is satisfactory. The division shall, within 20 days after the receipt of the medical report from the employer, enter its order approving or disapproving the report and specifying the particular disease or diseases found. The order shall be in writing stating the reasons for the approval or disapproval. A copy of the order shall be mailed to the employer and the applicant for employment within 24 hours after the division has approved or disapproved the report.

(4) An applicant for employment may commence work prior to the approval or disapproval of the report by the division. However, if the division

disapproves the report, the employer may discharge the applicant for employment without liability to him.

(5) If no physical examination is given to the applicant for employment within the 2-week period, the applicant for employment is fully eligible for the benefits under this chapter.

(6) The division may adopt reasonable rules relative to the form, execution, and filing of reports submitted under this section not inconsistent with the provisions of this chapter.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7).

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-306. En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 39, chapter 71, part 21), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 39, chapter 71, part 22), and the state compensation insurance fund under compensation plan No. 3 (Title 39, chapter 71, part 23), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1.

Part 4

Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979.

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

History: En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1.

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.

39-72-405. General limitations on payment of compensation to disabled employee — exceptions. (1) Except as provided for in this section, compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) Except as provided for in subsection (3) of this section, no compensation may be paid for silicosis unless during the 8 years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this chapter is eligible to receive compensation under this chapter when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the division may allow compensation on account thereof as it considers just, not exceeding $10,000.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979.

39-72-406. General limitations on payment of death benefits — exceptions. Compensation shall be paid to the beneficiaries of every employee covered by this chapter in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(1) Except as provided for in 39-72-405(3), compensation may not be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to July 1, 1959.

(2) No compensation may be paid for death from silicosis unless during the 8 years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(3) No compensation may be paid for death from silicosis unless the death results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results from the silicosis.

(4) No compensation may be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within 3 years from the last day upon which the employee actually worked

for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded or for which a claim, compensable but for such death, is on file with the division. In such cases, compensation shall be paid to the beneficiaries if death results from the occupational disease.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.**

39-72-407. Prima facie evidence of exposure to harmful quantities of silicon dioxide dust. Proof of the exposure to silicon dioxide dust for a period of not less than 1,200 workshifts in employment in this state, with proof of total disability from silicosis, is prima facie evidence of exposure to harmful quantities of such dust during all such period.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).**

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: **En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.**

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-501. En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.

39-72-502. En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.

39-72-503 through 39-72-508. En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1) through (6).

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: En. Sec. 6, Ch. 104, L. 1979.

Compiler's Comments

Codification. Sec. 20, Ch. 104, L. 1979, provided: "The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14."

Part 6

Medical Examinations — Determining Compensability of Claims

39-72-601. Medical panel. (1) The Montana medical association may, at least annually, certify to the division as nominees 10 or more licensed physicians of the state to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films. At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the list submitted as provided for in this section, the division shall appoint five or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the list of nominees as provided for in this section, the division shall appoint as members of the medical panel five or more licensed physicians in the state. Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films.

(4) The panel members shall appoint one member of the panel to be the chairman.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The division shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the division shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979.**

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).**

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: **En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.**

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the division. The report is prima facie evidence of fact as to the matters therein contained.

History: **En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979.**

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the division. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The division may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the division.

History: **En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979.**

39-72-607. Periodic medical examinations. (1) Upon the request of the division or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4).

39-72-608. Payment of medical examination and autopsy expenses. The expense of the first medical examination as provided in 39-72-602 shall be borne by the insurer. The expense of a reexamination shall be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations, as provided in 39-72-607, shall be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, shall be borne by the party requesting the autopsy.

History: En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979.

39-72-609. Report of medical panel prima facie evidence. A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained in the report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3).

39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the division or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979.

39-72-611. Hearing on determination — when. Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

History: **En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4).**

39-72-612. Rehearing and appeal to workers' compensation judge. (1) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination may not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

(2) Appeals from a final determination of the division shall be made to the workers' compensation judge within 30 days after the division has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: **(1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979.**

39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the division and the claim is determined compensable by the division after the hearing and the insurer does not appeal the division's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the division, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the division to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the division, the workers' compensation judge, and the supreme court.

History: **En. Sec. 14, Ch. 104, L. 1979.**

Compiler's Comments

Codification. Sec. 20, Ch. 104, L. 1979, provided: "The code commissioner shall codify section 6 of this act in Title 39, chapter 72, part 5, and section 14 of this act in Title 39, chapter 72, part 6, and the provisions of those parts apply, respectively, to section 6 and section 14."

Part 7

Compensation and Benefits

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the division.

History: En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979.

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.

39-72-706. Aggravation. (1) Where an occupational disease is aggravated by any other disease or infirmity not itself compensable or where disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any wise contributed to by an occupational disease, the compensation payable under this chapter shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) Where compensation is reduced a proportionate amount as in subsection (1) above and the worker receives disability social security benefits, the offset entitlement granted to the insurer shall be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

History: En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981.

Compiler's Comments
1981 Amendment: Added subsection (2).

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

History: En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(3), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until

approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979.

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the division to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The division may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part).

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The division may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5).

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

Section
39-73-101. Definitions.
39-73-102. Administration — duties of division.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.

Part 1

General Provisions

39-73-101. Definitions. (1) "Payments" means money payments to persons having silicosis as herein defined.

(2) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(3) "Examining board" shall mean well-qualified physician or physicians, as designated by the division of workers' compensation.

(4) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part).

39-73-102. Administration — duties of division. The division of workers' compensation shall administer this chapter. The division shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) publish an annual report and interim reports as may be necessary or required or asked for by the governor;

(4) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(5) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(6) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the division for that purpose;

(7) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the division of workers' compensation is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $200 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $200.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the division. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the division. The application form may be filled in and written by a person authorized by the division. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005.

39-73-106. Investigation of applications. (1) Whenever the division under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the division. The investigation of such applicant shall be conducted by representatives of the division. The physicians or physician designated by the division, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the division shall determine whether or not the applicant is entitled to a payment under this chapter. The division shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the division of workers' compensation, been determined by the division to be entitled payment under this chapter for silicosis shall be granted a payment by the division of $200 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $200, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981.

Compiler's Comments

1981 Amendment: Changed payments from "$175" to "$200".

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116(2).

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c).

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

TITLE 40

FAMILY LAW

Ch.
1. Marriage.
2. Husband and Wife.
3. Reconciliation.
4. Termination of Marriage, Child Custody, Support.
5. Enforcement of Support.
6. Parent and Child.
7. Uniform Child Custody Jurisdiction Act.
8. Adoption.
9. Grandparent Visitation.

CHAPTER 1

MARRIAGE

Part 1 — General Provisions

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40-1-321. Registration of marriage.
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Part 1

General Provisions

40-1-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) provide adequate procedures for the solemnization and registration of marriage;

(2) strengthen and preserve the integrity of marriage and safeguard family relationships.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-1-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-1-103. Formalities. Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage licensed, solemnized, and registered as provided in this chapter is valid in this state. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of this state.

History: En. 48-304 by Sec. 4, Ch. 536, L. 1975; R.C.M. 1947, 48-304.

40-1-104. Application. All marriages contracted within this state prior to January 1, 1976, or outside the state, that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this state.

History: En. 48-313 by Sec. 13, Ch. 536, L. 1975; R.C.M. 1947, 48-313.

40-1-105. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a

response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

40-1-106. Parts of code not applicable. The provisions of other portions of this code in relation to contracts and the capacity of persons to enter into them have no application to the contract of marriage.

History: En. Sec. 58, Civ. C. 1895; re-en. Sec. 3615, Rev. C. 1907; re-en. Sec. 5708, R.C.M. 1921; Field Civ. C. Sec. 43; re-en. Sec. 5708, R.C.M. 1935; R.C.M. 1947, 48-114.

40-1-107. Form of application, license, marriage certificate, and consent. (1) The director of the department of health and environmental sciences shall prescribe the form for an application for a marriage license, which shall include the following information:

(a) name, sex, address, date and place of birth of each party to the proposed marriage;

(b) if either party was previously married, his name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(c) name and address of the parents or guardian of each party;

(d) whether the parties are related to each other and, if so, their relationship; and

(e) the name and date of birth of any child of whom both parties are parents born prior to the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(2) The director of the department of health and environmental sciences shall prescribe the forms for the marriage license, the marriage certificate, and the consent to marriage.

History: En. 48-305 by Sec. 5, Ch. 536, L. 1975; R.C.M. 1947, 48-305.

Part 2

License Provisions

40-1-201. License application. (1) No Montana resident may be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least 5 days immediately prior to making application therefor.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

(3) If both parties are nonresidents of the state, the license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of the persons is a nonresident of the county where the license is to issue, his part of the application may be

completed and sworn to or affirmed before the person authorized to accept such applications in the county and state in which he resides.

History: En. Sec. 5, Ch. 232, L. 1963; amd. Sec. 8, Ch. 33, L. 1977; R.C.M. 1947, 48-146.

40-1-202. License issuance. When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk of the district court and paid the marriage license fee of $30, the clerk of the district court shall issue a license to marry and a marriage certificate form upon being furnished:

(1) satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license is effective or will have attained the age of 16 years and has obtained judicial approval as provided in 40-1-213;

(2) satisfactory proof that the marriage is not prohibited; and

(3) a certificate of the results of any medical examination required by the laws of this state.

History: En. 48-306 by Sec. 6, Ch. 536, L. 1975; R.C.M. 1947, 48-306; amd. Sec. 6, Ch. 677, L. 1979; amd. Sec. 2, Ch. 493, L. 1981.

Compiler's Comments

1981 Amendment: Increased marriage license fee from $25 to $30.

40-1-203. Proof of age and medical certificate required. (1) Before a person authorized by law to issue marriage licenses may issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if the applicant is a minor, the approval required by 40-1-213 and shall file with him a medical certificate from a physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make a medical certificate. The certificate shall state that the applicant has been given a standard serological test, performed not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is able to obtain a marriage license in this state is also able to give consent to any examinations and tests required by this section. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make a medical certificate shall designate that it is a premarital test.

History: En. Sec. 1, Ch. 208, L. 1947; amd. Sec. 1, Ch. 21, L. 1959; amd. Sec. 1, Ch. 248, L. 1973; amd. Sec. 4, Ch. 33, L. 1977; R.C.M. 1947, 48-134; amd. Sec. 1, Ch. 33, L. 1979; amd. Sec. 1, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "duly qualified" between "medical certificate from a" and "physician" in (1); deleted "an examination, including" before "a standard serological test" in (1); substituted "performed" for "made" following "standard serological test" in (1).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

40-1-204. Contents and form of medical certificate. (1) The medical certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician or other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

(3) The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department. This form is hereinafter referred to in 40-1-205 through 40-1-209 as "the certificate form".

History: En. Sec. 2, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 5, Ch. 33, L. 1977; R.C.M. 1947, 48-135.

40-1-205. Certificates from other states or for military personnel — when acceptable. Certificate forms provided by other states having comparable laws will be accepted for persons who have received a standard serological test outside of Montana if such tests are performed not more than 20 days before the issuance of a marriage license. Certificates provided by the United States armed forces will be accepted for military personnel if such certificates are signed by a medical officer commissioned in the United States armed forces or United States public health service and the certificates state the examinations are standard serological tests and were performed not more than 20 days before the issuance of the marriage license.

History: En. Sec. 3, Ch. 208, L. 1947; amd. Sec. 2, Ch. 248, L. 1973; R.C.M. 1947, 48-136; amd. Sec. 2, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "been examined and who have" before "received a standard serological test" and "examinations and" before "tests are performed" in the first sentence.

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

40-1-206. Premarital test — rules. For the purpose of 40-1-203 through 40-1-209, a standard serological test shall be a test for rubella immunity and syphilis, as approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department or a laboratory approved by that department. Any other state or United States public health service or United States armed forces laboratory shall be considered approved for the purposes of 40-1-203 through 40-1-209. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences.

History: En. Sec. 4, Ch. 208, L. 1947; amd. Sec. 3, Ch. 248, L. 1973; amd. Sec. 6, Ch. 33, L. 1977; R.C.M. 1947, 48-137.

40-1-207. Examination by health officer. Any applicant for a marriage license may, if he so chooses, be examined free of charge by the county physician or county health officer.

History: En. Sec. 5, Ch. 208, L. 1947; R.C.M. 1947, 48-138.

40-1-208. Penalties. (1) An applicant for a marriage license, a physician or other person authorized by the laws of Montana to make a medical certificate or any person in charge of or authorized to make reports or statements for a laboratory who misrepresents his identity or any of the facts called for by the certificate form prescribed by 40-1-203 through 40-1-205, any licensing officer who issues a marriage license without having received the certificate form or who has reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless issues a marriage license, or any person who otherwise fails to comply with the provisions of 40-1-203 through 40-1-209 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to in 40-1-203 through 40-1-209 are confidential and may not be divulged to or open to inspection by any person other than state or local health officers or their representatives. A person who divulges such information or opens to inspection such certificates, statements, reports, or applications, without authority, to any person not by law entitled to the same is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

History: **En. Sec. 6, Ch. 208, L. 1947; amd. Sec. 7, Ch. 33, L. 1977; R.C.M. 1947, 48-139.**

40-1-209. Expenses. The department of health and environmental sciences shall provide the necessary printing and pay the necessary expenses relative to the checking and approval of laboratories, clerical and technical assistance involved in the administration of 40-1-203 through 40-1-209, and other expenditures necessary in carrying out the provisions and purposes of 40-1-203 through 40-1-209. All claims for such expenses shall be submitted for approval and audit to the department of health and environmental sciences and shall be paid in accordance with law.

History: **En. Sec. 7, Ch. 208, L. 1947; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 48-140.**

40-1-210. No license to be issued when applicants under influence of liquor or drug. No license to marry shall be issued if, at the time of making application, either of the applicants is under the influence of intoxicating liquor or narcotic drug.

History: **En. Sec. 6, Ch. 232, L. 1963; R.C.M. 1947, 48-147.**

40-1-211. Repealed. Sec. 1, Ch. 124, L. 1979.

History: **En. Sec. 7, Ch. 232, L. 1963; R.C.M. 1947, 48-148.**

40-1-212. Effective date of license. A license to marry becomes effective throughout this state 3 days after the date of issuance, unless the judge of the district court orders that the license is effective when issued, and expires 180 days after it becomes effective.

History: **En. 48-307 by Sec. 7, Ch. 536, L. 1975; R.C.M. 1947, 48-307.**

40-1-213. Judicial approval. (1) The district court may order the clerk of the district court to issue a marriage license and a marriage certificate form to a party aged 16 or 17 years who has no parent capable of consenting to his marriage or has the consent of both parents or of the parent having the actual care, custody, and control to his marriage, if capable of giving consent, or of his guardian. The court must require both parties to participate in a period of marriage counseling involving at least two separate counseling sessions not less than 10 days apart with a designated counselor as a condition of the order for issuance of a marriage license and a marriage certificate form under this section.

(2) A marriage license and a marriage certificate form may be issued under this section only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.

(3) The district court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

History: En. 48-308 by Sec. 8, Ch. 536, L. 1975; R.C.M. 1947, 48-308; amd. Sec. 1, Ch. 183, L. 1979.

Part 3

Solemnization

40-1-301. Solemnization and registration. (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, by a mayor or justice of the peace, by a tribal judge, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified.

History: En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; R.C.M. 1947, 48-309(1), (2), (4); amd. Sec. 1, Ch. 247, L. 1979.

40-1-302 through 40-1-310 reserved.

40-1-311. Declaration of marriage without solemnization. (1) Persons desiring to consummate a marriage by written declaration in this state without the solemnization provided for in 40-1-301 must, prior to executing the declaration, secure the medical certificate required by this chapter, which shall be firmly attached to the declaration and shall be filed by the clerk of the district court in the county where the contract was executed. A declaration of marriage must contain substantially the following:

(a) the names, ages, and residences of the parties;

(b) the fact of marriage;

(c) the name of father and maiden name of mother of both parties and address of each;

(d) a statement that both parties are legally competent to enter into the marriage contract.

(2) The declaration must be subscribed by the parties and attested by at least two witnesses and formally acknowledged before the clerk of the district court of the county.

History: **En. Sec. 85, Civ. C. 1895; re-en. Sec. 3631, Rev. C. 1907; re-en. Sec. 5724, R.C.M. 1921; Cal. Civ. C. Sec. 75; re-en. Sec. 5724, R.C.M. 1935; amd. Sec. 1, Ch. 275, L. 1959; amd. Sec. 44, Ch. 536, L. 1975; R.C.M. 1947, 48-130; amd. Sec. 2, Ch. 33, L. 1979.**

40-1-312. Persons who may draft declaration of marriage. It shall be unlawful for any person other than the parties to such written declaration to draw any such declaration of marriage unless he shall have been duly licensed to practice law in the state of Montana.

History: **En. Sec. 2, Ch. 275, L. 1959; R.C.M. 1947, 48-130.1.**

40-1-313. Penalty. Any person violating the provisions of 40-1-311 or 40-1-312, upon conviction, shall be subject to a fine of not less than $300 or 6 months in a county jail, or both.

History: **En. Sec. 3, Ch. 275, L. 1959; R.C.M. 1947, 48-130.2.**

40-1-314 through 40-1-320 reserved.

40-1-321. Registration of marriage. (1) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(2) Every person solemnizing a marriage who shall neglect to make and deliver to the clerk of the district court a certificate thereof within 30 days after having solemnized such marriage shall forfeit for such neglect a sum not less than $10 or more than $50; and any clerk of the district court who shall neglect to record such certificate so delivered within 1 month after its delivery shall forfeit the like penalty.

History: **(1)En. 48-309 by Sec. 9, Ch. 536, L. 1975; amd. Sec. 9, Ch. 33, L. 1977; Sec. 48-309, R.C.M. 1947; (2)En. Sec. 7, p. 409, Bannack Stat.; re-en. Sec. 7, p. 520, Cod. Stat. 1871; re-en. Sec. 860, 5th Div. Rev. Stat. 1879; re-en. Sec. 1421, 5th Div. Comp. Stat. 1887; amd. Sec. 79, Civ. C. 1895; re-en. Sec. 3625, Rev. C. 1907; re-en. Sec. 5718, R.C.M. 1921; re-en. Sec. 5718, R.C.M. 1935; Sec. 48-124, R.C.M. 1947; R.C.M. 1947, 48-124, 48-309(3).**

40-1-322. Certificate and copy presumptive evidence. The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage.

History: **En. Sec. 10, p. 410, Bannack Stat.; re-en. Sec. 10, p. 521, Cod. Stat. 1871; re-en. Sec. 863, 5th Div. Rev. Stat. 1879; re-en. Sec. 1424, 5th Div. Comp. Stat. 1887; amd. Sec. 81, Civ. C. 1895; re-en. Sec. 3627, Rev. C. 1907; re-en. Sec. 5720, R.C.M. 1921; re-en. Sec. 5720, R.C.M. 1935; amd. Sec. 3, Ch. 33, L. 1977; R.C.M. 1947, 48-126.**

40-1-323. Proof of solemnized marriage when no record. If the record of the solemnization of a marriage heretofore entered into has been lost or destroyed and not known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) the names, ages, and residences of the parties;

(2) the date and place of marriage and other pertinent facts of the marriage;

(3) that the record of the solemnized marriage has become lost or destroyed, as the case may be, and is not known to exist.

History: **En. Sec. 86, Civ. C. 1895; re-en. Sec. 3632, Rev. C. 1907; re-en. Sec. 5725, R.C.M. 1921; Cal. Civ. C. Sec. 76; re-en. Sec. 5725, R.C.M. 1935; amd. Sec. 1, Ch. 276, L. 1959; R.C.M. 1947, 48-131.**

40-1-324. Declaration to be acknowledged and recorded. The written declaration of marriage provided for in 40-1-323 shall be attested by at least two witnesses and formally acknowledged by an official authorized to administer oaths in the state of Montana. The filing of the declaration with the clerk of the district court in the county of the residence of the parties shall serve as an official record of the marriage of the parties.

History: **En. Sec. 87, Civ. C. 1895; re-en. Sec. 3633, Rev. C. 1907; re-en. Sec. 5726, R.C.M. 1921; Cal. Civ. C. Sec. 77; re-en. Sec. 5726, R.C.M. 1935; amd. Sec. 2, Ch. 276, L. 1959; R.C.M. 1947, 48-132.**

Part 4

Validity of Marriages — Declaration of Invalidity

40-1-401. Prohibited marriages. (1) The following marriages are prohibited:

(a) a marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

(b) a marriage between an ancestor and a descendant or between a brother and a sister, whether the relationship is by the half or the whole blood, or between first cousins;

(c) a marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood.

(2) Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.

(3) Children born of a prohibited marriage are legitimate.

History: **En. 48-310 by Sec. 10, Ch. 536, L. 1975; R.C.M. 1947, 48-310.**

40-1-402. Declaration of invalidity. (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was entered into, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse and at the time the marriage was entered into the other party did not know of the incapacity;

(c) a party was under the age of 16 years or was aged 16 or 17 years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsections (1)(a) through (1)(c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than 1 year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than 1 year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress, or fraud, no later than 2 years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than 4 years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of chapter 4 relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

History: En. 48-311 by Sec. 11, Ch. 536, L. 1975; amd. Sec. 1, Ch. 279, L. 1977; R.C.M. 1947, 48-311.

40-1-403. Validity of common-law marriage. Common-law marriages are not invalidated by this chapter. Declarations of marriage pursuant to 40-1-311 through 40-1-313, 40-1-323, and 40-1-324 are not invalidated by this chapter.

History: En. 48-314 by Sec. 14, Ch. 536, L. 1975; R.C.M. 1947, 48-314.

40-1-404. Putative spouse. Any person who has cohabited with another to whom he is not legally married in the good-faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited (40-1-401) or declared invalid (40-1-402). If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance, and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

History: **En. 48-312 by Sec. 12, Ch. 536, L. 1975; R.C.M. 1947, 48-312.**

CHAPTER 2

HUSBAND AND WIFE

Part 1 — Joint Interests, Obligations, and Powers

Section
40-2-101. Mutual obligations of husband and wife.
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40-2-103. Support of spouse.
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Part 1

Joint Interests, Obligations, and Powers

40-2-101. Mutual obligations of husband and wife. Husband and wife contract toward each other obligations of mutual respect, fidelity, and support.

History: En. Sec. 210, Civ. C. 1895; re-en. Sec. 3690, Rev. C. 1907; re-en. Sec. 5782, R.C.M. 1921; Cal. Civ. C. Sec. 155; Field Civ. C. Sec. 75; re-en. Sec. 5782, R.C.M. 1935; R.C.M. 1947, 36-101.

40-2-102. Duties of husband and wife as to support. Insofar as each is able, the husband and wife shall support each other out of their property and labor. As used in this section, the word "support" includes the nonmonetary support provided by a spouse as homemaker.

History: En. Sec. 212, Civ. C. 1895; re-en. Sec. 3692, Rev. C. 1907; re-en. Sec. 5784, R.C.M. 1921; Field Civ. C. Sec. 77; re-en. Sec. 5784, R.C.M. 1935; amd. Sec. 1, Ch. 293, L. 1975; R.C.M. 1947, 36-103.

40-2-103. Support of spouse. If a married person who is able neglects to make adequate provision for the financial support of his spouse, except in the cases mentioned in 40-2-104, any other person may in good faith supply the spouse with articles necessary for support and recover the reasonable value thereof from the married person who has failed to provide such support.

History: En. Sec. 244, Civ. C. 1895; re-en. Sec. 3724, Rev. C. 1907; re-en. Sec. 5800, R.C.M. 1921; Cal. Civ. C. Sec. 174; Field Civ. C. Sec. 84; re-en. Sec. 5800, R.C.M. 1935; amd. Sec. 12, Ch. 293, L. 1975; R.C.M. 1947, 36-119.

40-2-104. Liability of married person when abandoned by spouse. A married person abandoned by his spouse is not liable for the spouse's support until the spouse offers to return, unless the spouse was justified by the person's misconduct in abandoning him, nor is a married person liable for support of a spouse who is living separate from him by agreement, unless such support is stipulated in the agreement.

History: En. Sec. 245, Civ. C. 1895; re-en. Sec. 3725, Rev. C. 1907; re-en. Sec. 5801, R.C.M. 1921; Cal. Civ. C. Sec. 175; Based on Field Civ. C. Sec. 85; re-en. Sec. 5801, R.C.M. 1935; amd. Sec. 13, Ch. 293, L. 1975; R.C.M. 1947, 36-120.

40-2-105. Husband and wife as joint tenants. A husband and wife may hold real or personal property together, jointly or in common.

History: En. Sec. 217, Civ. C. 1895; re-en. Sec. 3697, Rev. C. 1907; re-en. Sec. 5789, R.C.M. 1921; Cal. Civ. C. Sec. 161; Field Civ. C. Sec. 82; re-en. Sec. 5789, R.C.M. 1935; R.C.M. 1947, 36-108.

40-2-106. Liability for acts or debts of spouse. Neither husband nor wife, as such, is answerable for the acts of the other or liable for the debts contracted by the other; provided, however, that the expenses for necessaries of the family and of the education of the children are chargeable upon the property of both husband and wife, or either of them, and in relation thereto they may be sued jointly or separately.

History: En. Sec. 218, Civ. C. 1895; re-en. Sec. 3698, Rev. C. 1907; amd. Sec. 1, Ch. 129, L. 1915; re-en. Sec. 5790, R.C.M. 1921; re-en. Sec. 5790, R.C.M. 1935; R.C.M. 1947, 36-109.

40-2-107. May sue and be sued. A married person may sue and be sued in the same manner as if he were sole.

History: En. Sec. 1444, 5th Div. Comp. Stat. 1887; re-en. Sec. 253, Civ. C. 1895; re-en. Sec. 3733, Rev. C. 1907; re-en. Sec. 5809, R.C.M. 1921; re-en. Sec. 5809, R.C.M. 1935; amd. Sec. 15, Ch. 293, L. 1975; R.C.M. 1947, 36-128.

40-2-108. Married person as personal representative, guardian, conservator, or trustee. A married person may be a personal representative, guardian, conservator, or trustee and may bind himself and the estate he represents without any act or assent on the part of the person's spouse.

History: En. Sec. 1443, 5th Div. Comp. Stat. 1887; re-en. Sec. 252, Civ. C. 1895; re-en. Sec. 3732, Rev. C. 1907; re-en. Sec. 5808, R.C.M. 1921; re-en. Sec. 5808, R.C.M. 1935; amd. Sec. 14, Ch. 293, L. 1975; R.C.M. 1947, 36-127.

40-2-109. Right of person to sue spouse for intentional tort. A person has a cause of action against his spouse for damages caused by the spouse's intentional tort against such person, and the common law doctrine of interspousal tort immunity is, to that extent, abolished.

History: En. Sec. 1, Ch. 407, L. 1979.

Part 2

Individual Property

40-2-201. When husband's and wife's interests separate. Neither husband nor wife has any interest in the property of the other, except as mentioned in 40-2-102, but neither can be excluded from the other's dwelling unless enjoined by a court.

History: En. Sec. 213, Civ. C. 1895; re-en. Sec. 3693, Rev. C. 1907; re-en. Sec. 5785, R.C.M. 1921; Cal. Civ. C. Sec. 157; Field Civ. C. Sec. 78; re-en. Sec. 5785, R.C.M. 1935; R.C.M. 1947, 36-104; amd. Sec. 2, Ch. 407, L. 1979.

40-2-202. Individual property of married person. All the property of a married person owned before marriage and that acquired afterwards is his individual property. The married person may, without consent, agreement, and signature of his spouse, convey and transfer his individual property, real or personal, including the fee simple title to real property, or execute a power of attorney for the conveyance and transfer thereof.

History: En. Sec. 220, Civ. C. 1895; re-en. Sec. 3700, Rev. C. 1907; re-en. Sec. 5792, R.C.M. 1921; Cal. Civ. C. Sec. 162; amd. Sec. 1, Ch. 63, L. 1923; re-en. Sec. 5792, R.C.M. 1935; amd. Sec. 3, Ch. 293, L. 1975; R.C.M. 1947, 36-111.

40-2-203. Inventory of individual personal property of married person. A married person's title to and ownership of his individual property may be proved or demonstrated in the same manner that a single person's ownership of or title to his individual property may be proved. Provided, however, that if a married person chooses, he may make out and sign an inventory of his individual personal property, which inventory shall be acknowledged or proved in the same manner required by law for the acknowledgment or proof of a grant of real property and recorded in the office of the county clerk of the county in which the person lives.

History: En. Sec. 221, Civ. C. 1895; re-en. Sec. 3701, Rev. C. 1907; re-en. Sec. 5793, R.C.M. 1921; Cal. Civ. C. Sec. 165; re-en. Sec. 5793, R.C.M. 1935; amd. Sec. 4, Ch. 293, L. 1975; R.C.M. 1947, 36-112.

40-2-204. Effect of filing inventory. The filing of the inventory in the clerk's office is notice and prima facie evidence of the title of the person so filing.

History: En. Sec. 222, Civ. C. 1895; re-en. Sec. 3702, Rev. C. 1907; re-en. Sec. 5794, R.C.M. 1921; Cal. Civ. C. Sec. 166; re-en. Sec. 5794, R.C.M. 1935; amd. Sec. 5, Ch. 293, L. 1975; R.C.M. 1947, 36-113.

40-2-205. Earnings and accumulations of married person. The earnings and accumulations of a married person are not liable for the debts of that person's spouse except for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 223, Civ. C. 1895; re-en. Sec. 3703, Rev. C. 1907; re-en. Sec. 5795, R.C.M. 1921; Cal. Civ. C. Sec. 168; re-en. Sec. 5795, R.C.M. 1935; amd. Sec. 6, Ch. 293, L. 1975; R.C.M. 1947, 36-114.

40-2-206. Same — when separated. The earnings and accumulations of a married person and of his minor children living with him or in his custody, while he is living separate from his spouse, are the individual property of such person except that, to the extent that a mutual duty of support between the husband and wife as established by 40-2-102 still exists, such earnings and accumulations are liable for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children.

History: En. Sec. 224, Civ. C. 1895; re-en. Sec. 3704, Rev. C. 1907; re-en. Sec. 5796, R.C.M. 1921; Cal. Civ. C. Sec. 169; re-en. Sec. 5796, R.C.M. 1935; amd. Sec. 7, Ch. 293, L. 1975; R.C.M. 1947, 36-115.

40-2-207. Work and labor of married person. All work and labor performed by a married person for a person other than his spouse and children shall, unless there is a written agreement on his part to the contrary, be presumed to be performed on his separate account. This section does not affect the liability of earnings for debts incurred for necessary articles procured for the use and benefit of the married person, his spouse, or minor children, as established by 40-2-205, 40-2-206, 40-2-209, and 40-2-210.

History: En. Sec. 1442, 5th Div. Comp. Stat. 1887; re-en. Sec. 225, Civ. C. 1895; re-en. Sec. 3705, Rev. C. 1907; re-en. Sec. 5797, R.C.M. 1921; re-en. Sec. 5797, R.C.M. 1935; amd. Sec. 8, Ch. 293, L. 1975; R.C.M. 1947, 36-116.

40-2-208. Debts of spouse contracted before marriage. The property of a married person is not liable for the debts of the person's spouse contracted before marriage.

History: En. Sec. 226, Civ. C. 1895; re-en. Sec. 3706, Rev. C. 1907; re-en. Sec. 5798, R.C.M. 1921; Cal. Civ. C. Sec. 170; re-en. Sec. 5798, R.C.M. 1935; amd. Sec. 9, Ch. 293, L. 1975; R.C.M. 1947, 36-117.

40-2-209. Individual property of married person — how far liable. Individual property of a married person listed in an inventory as provided in 40-2-203 and 40-2-204 or otherwise proved to be the individual property of the married person is exempt from all debts and liabilities of that person's spouse, except:

(1) when the debt or liability is for necessary articles procured for the use and benefit of the married person, the spouse, or minor children; or

(2) when the property is in the sole and exclusive possession of the spouse and the creditors have dealt with the spouse in good faith on the credit of the individual property without knowledge that the property does not belong to the spouse.

History: En. Sec. 1, p. 369, Bannack Stat.; re-en. Sec. 1, p. 521, Cod. Stat. 1871; re-en. Sec. 866, 5th Div. Rev. Stat. 1879; re-en. Sec. 1432, 5th Div. Comp. Stat. 1887; amd. Sec. 227, Civ. C. 1895; re-en. Sec. 3707, Rev. C. 1907; re-en. Sec. 5799, R.C.M. 1921; Cal. Civ. C. Sec. 171; re-en. Sec. 5799, R.C.M. 1935; amd. Sec. 10, Ch. 293, L. 1975; R.C.M. 1947, 36-118.

40-2-210. Necessity determined by standard of living. For purposes of determining whether a married person's earnings or individual property are exempt from the debts incurred by the person's spouse, the phrase "necessary articles" includes all such goods and services as are reasonably required to provide for the health, welfare, comfort, and education of the married person, his spouse, and minor children, taking into consideration the earnings, resources, and general standard of living of such persons.

History: En. 36-118.1 by Sec. 11, Ch. 293, L. 1975; R.C.M. 1947, 36-118.1.

Part 3

Power of Married Persons to Contract

40-2-301. Husband and wife may contract. Either husband or wife may enter into any engagement or transaction with the other or with any other person respecting property which either might, if unmarried, subject in transactions between themselves to the general rules which control the actions of persons occupying confidential relations with each other, as defined by the provisions of this code relative to trusts.

History: En. Sec. 214, Civ. C. 1895; re-en. Sec. 3694, Rev. C. 1907; re-en. Sec. 5786, R.C.M. 1921; Cal. Civ. C. Sec. 158; Field Civ. C. Sec. 79; re-en. Sec. 5786, R.C.M. 1935; R.C.M. 1947, 36-105.

40-2-302. Liability of spouse. The contracts made by a married person in respect to his individual property, labor, or services shall not be binding upon the person's spouse nor render him or his property liable therefor; but the contracting person and that person's individual property shall be liable on such contracts in the same manner as if such person were sole.

History: En. Sec. 1446, 5th Div. Comp. Stat. 1887; re-en. Sec. 254, Civ. C. 1895; re-en. Sec. 3734, Rev. C. 1907; re-en. Sec. 5810, R.C.M. 1921; re-en. Sec. 5810, R.C.M. 1935; amd. Sec. 16, Ch. 293, L. 1975; R.C.M. 1947, 36-129.

40-2-303. Alteration of legal relation by contract — separation agreement. A husband and wife cannot by any contract with each other alter their legal relation, except as to property and except that they may agree, in writing, to an immediate separation and may make provision for the support of either of them and of their children during such separation.

History: En. Sec. 215, Civ. C. 1895; re-en. Sec. 3695, Rev. C. 1907; re-en. Sec. 5787, R.C.M. 1921; Cal. Civ. C. Sec. 159; Based on Field Civ. C. Sec. 80; re-en. Sec. 5787, R.C.M. 1935; R.C.M. 1947, 36-106.

40-2-304. Consideration for separation. The mutual consent of the parties is a sufficient consideration for such an agreement as mentioned in 40-2-303.

History: En. Sec. 216, Civ. C. 1895; re-en. Sec. 3696, Rev. C. 1907; re-en. Sec. 5788, R.C.M. 1921; Cal. Civ. C. Sec. 160; Field Civ. C. Sec. 81; re-en. Sec. 5788, R.C.M. 1935; R.C.M. 1947, 36-107.

40-2-305 through 40-2-310 reserved.

40-2-311. Rights of husband and wife — how governed. The property rights of the husband and wife are governed by parts 1 through 3 of this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

History: En. Sec. 247, Civ. C. 1895; re-en. Sec. 3727, Rev. C. 1907; re-en. Sec. 5803, R.C.M. 1921; Cal. Civ. C. Sec. 177; re-en. Sec. 5803, R.C.M. 1935; R.C.M. 1947, 36-122.

40-2-312. Marriage settlement contracts — how executed. All contracts for marriage settlements must be in writing and executed and acknowledged or proved in like manner as a grant of land is required to be executed and acknowledged or proved.

History: En. Sec. 248, Civ. C. 1895; re-en. Sec. 3728, Rev. C. 1907; re-en. Sec. 5804, R.C.M. 1921; Cal. Civ. C. Sec. 178; re-en. Sec. 5804, R.C.M. 1935; R.C.M. 1947, 36-123.

40-2-313. Contract to be acknowledged and recorded. When such contract is acknowledged or proved, it must be recorded in the office of the county clerk of every county in which any real estate which is granted or affected by such contract may be situated.

History: En. Sec. 249, Civ. C. 1895; re-en. Sec. 3729, Rev. C. 1907; re-en. Sec. 5805, R.C.M. 1921; Cal. Civ. C. Sec. 179; re-en. Sec. 5805, R.C.M. 1935; R.C.M. 1947, 36-124.

40-2-314. Effect of recording. The recording or nonrecording of such contract has a like effect as the recording or nonrecording of a grant of real property.

History: En. Sec. 250, Civ. C. 1895; re-en. Sec. 3730, Rev. C. 1907; re-en. Sec. 5806, R.C.M. 1921; Cal. Civ. C. Sec. 180; re-en. Sec. 5806, R.C.M. 1935; R.C.M. 1947, 36-125.

40-2-315. Marriage settlement by minors. A minor capable of contracting marriage may make a valid marriage settlement, as herein provided.

History: En. Sec. 251, Civ. C. 1895; re-en. Sec. 3731, Rev. C. 1907; re-en. Sec. 5807, R.C.M. 1921; Cal. Civ. C. Sec. 181; re-en. Sec. 5807, R.C.M. 1935; R.C.M. 1947, 36-126.

Part 4

Battered Spouses Grant Programs

Part Compiler's Comments

Appropriation: Section 5, Ch. 493, L. 1981, provided: "(1) There is appropriated from the general fund to the department of social and rehabilitation services for the battered spouses and domestic violence grant program the following amounts:

For the fiscal year ending June 30, 1982	$40,500
For the fiscal year ending June 30, 1983	$40,500

(2) The appropriation provided for in subsection (1) may be used only for regional shelter or safe house programs for victims as provided for in 40-2-404."

40-2-401. Battered spouses and domestic violence grant program created. There is a grant program established within the department of social and rehabilitation services for the allocation of grant money to local battered spouses and domestic violence programs.

History: En. Sec. 1, Ch. 677, L. 1979.

40-2-402. Duties of department. The department of social and rehabilitation services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: En. Sec. 5, Ch. 677, L. 1979.

40-2-403. Authorized grantees — criteria for grants. (1) The department of social and rehabilitation services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

History: En. Sec. 3, Ch. 677, L. 1979.

40-2-404. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of social and rehabilitation services according to regional boundaries established by the department.

History: En. Sec. 4, Ch. 677, L. 1979; amd. Sec. 3, Ch. 493, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

40-2-405. Funding. (1) Revenue from the marriage license fee is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: En. Sec. 2, Ch. 677, L. 1979; amd. Sec. 4, Ch. 493, L. 1981.

Compiler's Comments

1981 Amendment: Changed language relating to disposition of the marriage license fee from $16/$9 county/general fund disposition to disposition based on 25-1-201.

CHAPTER 3

RECONCILIATION

Part 1 — Montana Conciliation Law

Section
40-3-101. Citation.
40-3-102. Purposes.
40-3-103. Use of shall and may.
40-3-104. Application.
Sections 40-3-105 through 40-3-110 reserved.
40-3-111. Conciliation court — jurisdiction.
40-3-112. Selection of judges.
40-3-113. Transfer of cases.
40-3-114. Budget.
40-3-115. Probation officers' duties.
40-3-116. Privacy of hearings.
Sections 40-3-117 through 40-3-120 reserved.
40-3-121. Filing of petition.
40-3-122. Petition form and contents.
40-3-123. No fees.
40-3-124. Manner of conciliation.
40-3-125. Hearings.
40-3-126. Orders — reconciliation agreement.
40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect.

Part 1

Montana Conciliation Law

40-3-101. Citation. This chapter may be cited as the "Montana Conciliation Law".

History: **En. Sec. 1, Ch. 238, L. 1963; R.C.M. 1947, 36-201.**

40-3-102. Purposes. The purposes of this chapter are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

History: **En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(1).**

40-3-103. Use of shall and may. As used in this chapter "shall" is mandatory and "may" is permissive.

History: **En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(2).**

40-3-104. Application. The provisions of this chapter shall be applicable only in counties in which the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures herein provided necessary to the full and proper consideration of such cases and the effectuation of the purposes of this chapter. Such determination shall be made annually in the month of January or July by the judge of the district court in counties having only one such judge and by a majority of the judges of the district court in counties having more than one such judge.

History: **En. Sec. 2, Ch. 238, L. 1963; R.C.M. 1947, 36-202(3).**

40-3-105 through 40-3-110 reserved.

40-3-111. Conciliation court — jurisdiction. (1) Each district court shall exercise the jurisdiction conferred by this chapter and while sitting in the exercise of such jurisdiction shall be known and referred to as the "conciliation court".

(2) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(3) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for dissolution, annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children.

(4) The jurisdiction of the conciliation courts and the powers thereof shall be as provided in the constitution of Montana, Title 3, chapter 5, parts 1 through 4, and acts amendatory and relating thereto, including the right of disqualification of any judge of the conciliation court.

History: **(1), (4)En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; Sec. 36-203, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; Sec. 36-204, R.C.M. 1947; R.C.M. 1947, 36-203(1), (8), 36-204(1), (13).**

40-3-112. Selection of judges. In counties having more than one judge of the district court, the judges of such court shall annually, in the month of January or July, designate at least one judge to hear all cases under this chapter. The judge or judges so designated shall hold as many sessions of the conciliation court in each week as are necessary for the prompt disposition of the business before the court.

History: **En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(2).**

40-3-113. Transfer of cases. Another district judge may be called in by the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under this chapter.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(3).

40-3-114. Budget. The provisions of the county budget system, Title 7, chapter 6, part 23, shall, except as provided by 40-3-125(3), be applicable to expenditures for the court of conciliation.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(4); amd. Sec. 3, Ch. 405, L. 1979.

40-3-115. Probation officers' duties. The probation officer in every county shall give such assistance to the conciliation court as the court may request to carry out the purposes of this chapter, and to that end the probation officer shall, upon request and with the consent of both parties, make investigations and reports as requested and, in cases pursuant to this chapter, shall exercise all the powers and perform all the duties granted or imposed by the laws of this state relating to probation or to probation officers.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(6).

40-3-116. Privacy of hearings. (1) All district court hearings or conferences in proceedings under this chapter shall be held in private, and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his counsel separately. In the discretion of the judge or counselor conducting the conference or hearing, all counsel may be excluded. All communications, verbal or written, from parties to the judge or counselor in a proceeding under this chapter shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(7).

40-3-117 through 40-3-120 reserved.

40-3-121. Filing of petition. Prior to the filing of any action for dissolution, annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(2).

40-3-122. Petition form and contents. (1) The petition shall be captioned substantially as follows:

District Court of the State of Montana
For the County of ....

Upon the petition of Petition for Conciliation

.... (Under the Conciliation
Petitioner Court Law)

And concerning
.... and
....
Respondents.

To the Conciliation Court:

(2) The petition shall:

(a) allege that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) state the name and age of each minor child whose welfare may be affected by the controversy;

(c) state the name and address of the petitioner or the names and addresses of the petitioners;

(d) if the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) also name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) state such other information as the court may by rule require.

(3) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(3) thru (5).

40-3-123. No fees. No fee may be charged by any officer for filing the petition nor may any fee be charged by any officer for the performance of any duty pursuant to this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(6).

40-3-124. Manner of conciliation. (1) The judge of the conciliation court may hear all matters invoked under this chapter, or he may refer such matters to a pastor or director of any religious denomination to which the parties may belong, psychiatrist, physician, attorney, social worker, or other person who is competent and qualified by training and experience in personal counseling. Such person shall be referred to herein as the conciliation counselor.

(2) The conciliation counselor shall:

(a) hold conciliation conferences with parties to, and hearings in, proceedings under this chapter and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct.

History: En. Sec. 3, Ch. 238, L. 1963; amd. Sec. 16, Ch. 100, L. 1973; R.C.M. 1947, 36-203(5).

40-3-125. Hearings. (1) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it considers necessary to be given to the respondents. The court may, when it considers it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(2) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that the time and place for hearing may not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(3) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this chapter, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(7) thru (9).

40-3-126. Orders — reconciliation agreement. (1) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court considers necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event may such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(10).

40-3-127. Dissolution, declaration of invalidity, or separate maintenance proceeding — effect. (1) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for dissolution, declaration of invalidity, or separate maintenance.

(2) If after the expiration of such period the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution, declaration of invalidity, or separate maintenance. The pendency of a dissolution, declaration of invalidity, or separate maintenance action may

not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(3) Whenever any action for dissolution, declaration of invalidity, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or declaration of invalidity of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

History: En. Sec. 4, Ch. 238, L. 1963; amd. Sec. 2, Ch. 33, L. 1977; R.C.M. 1947, 36-204(11), (12); amd. Sec. 169, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "declaration of invalidity" for "annulment" or "annulment of marriage" in five places.

CHAPTER 4

TERMINATION OF MARRIAGE, CHILD CUSTODY, SUPPORT

Part 1 — Separation—Dissolution of Marriage

Section

40-4-101. Purposes.
40-4-102. Uniformity of application and construction.
40-4-103. Application of the Montana Rules of Civil Procedure.
40-4-104. Dissolution of marriage — legal separation.
40-4-105. Procedure — commencement — pleadings — abolition of existing defenses.
40-4-106. Temporary order or temporary injunction.
40-4-107. Irretrievable breakdown.
40-4-108. Decree.
40-4-109. Independence of provisions of decree or temporary order.
40-4-110. Costs — attorney's fees.

Part 2 — Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement.
40-4-202. Disposition of property.
40-4-203. Maintenance.
40-4-204. Child support.
40-4-205. Representation of child.
40-4-206. Payment of maintenance or support to court.
40-4-207. Assignments.
40-4-208. Modification and termination of provisions for maintenance, support, and property disposition.
Sections 40-4-209 and 40-4-210 reserved.
40-4-211. Jurisdiction — commencement of proceedings.
40-4-212. Best interest of child.
40-4-213. Temporary orders.
40-4-214. Interviews.
40-4-215. Investigations and reports.

40-4-216. Hearings.
40-4-217. Visitation.
40-4-218. Judicial supervision.
40-4-219. Modification.
40-4-220. Affidavit practice.
40-4-221. Determination of custody upon death of custodial parent.
40-4-222. Declaration of legislative intent — joint custody.
40-4-223. Award of joint or separate custody.
40-4-224. Joint custody — modification — consultation with professionals.
40-4-225. Access to records by noncustodial parent.

Part 1

Separation — Dissolution of Marriage

40-4-101. Purposes. This chapter shall be liberally construed and applied to promote its underlying purposes, which are to:

(1) strengthen and preserve the integrity of marriage and safeguard family relationships;

(2) promote the amicable settlement of disputes that have arisen between parties to a marriage;

(3) mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;

(4) make reasonable provision for spouse and minor children during and after litigation; and

(5) make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

History: En. 48-302 by Sec. 2, Ch. 536, L. 1975; R.C.M. 1947, 48-302(part).

40-4-102. Uniformity of application and construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it.

History: En. 48-303 by Sec. 3, Ch. 536, L. 1975; R.C.M. 1947, 48-303.

40-4-103. Application of the Montana Rules of Civil Procedure. (1) Except for proceedings coming under the Uniform Child Custody Jurisdiction Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for dissolution of marriage or legal separation shall be entitled, "In re the Marriage of .... and ....". A custody or support proceeding shall be entitled, "In re the (custody) (support) of ....".

(3) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, shall be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties but shall provide that it affects the status previously existing between the parties in the manner decreed.

History: En. 48-315 by Sec. 15, Ch. 536, L. 1975; amd. Sec. 26, Ch. 537, L. 1977; R.C.M. 1947, 48-315(part).

40-4-104. Dissolution of marriage — legal separation. (1) The district court shall enter a decree of dissolution of marriage if:

(a) the court finds that one of the parties, at the time the action was commenced, was domiciled in this state or was stationed in this state while a member of the armed services and that the domicile or military presence has been maintained for 90 days next preceding the making of the findings;

(b) the court finds that the marriage is irretrievably broken, which findings shall be supported by evidence:

(i) that the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) that there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage;

(c) the court finds that the conciliation provisions of the Montana Conciliation Law and of 40-4-107 either do not apply or have been met; and

(d) to the extent it has jurisdiction to do so, the court has considered, approved, or made provision for child custody, the support of any child entitled to support, the maintenance of either spouse, and the disposition of property or provided for a separate, later hearing to complete these matters.

(2) If a party requests a decree of legal separation rather than a decree of dissolution of marriage, the court shall grant the decree in that form unless the other party objects.

History: En. 48-316 by Sec. 16, Ch. 536, L. 1975; R.C.M. 1947, 48-316.

40-4-105. Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

History: **En. 48-317 by Sec. 17, Ch. 536, L. 1975; amd. Sec. 10, Ch. 33, L. 1977; R.C.M. 1947, 48-317.**

40-4-106. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any child;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) of this section without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition alleging physical abuse against the petitioner by a spouse and requesting injunctive relief under Title 27, chapter 19, part 3. Any preliminary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208.

(4) The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for

temporary maintenance or support in amounts and on terms just and proper in the circumstance.

(7) A temporary order or temporary injunction:

(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

(b) may be revoked or modified before final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208; and

(c) terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

History: En. 48-318 by Sec. 18, Ch. 536, L. 1975; R.C.M. 1947, 48-318; amd. Sec. 1, Ch. 180, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (3) relating to preliminary injunction for physical abuse.

Preamble: The preamble to HB 405 (Ch. 180, L. 1981) provided: "WHEREAS, former Governor Judge appointed a task force to recommend ways in which spouse abuse could be stopped; and

WHEREAS, spouse abuse weakens the dignity and integrity of the family unit, and the state therefore has a substantial interest in aiding spouse abuse victims through the enforcement of state laws; and

WHEREAS, the task force recognized that the state's current laws on obtaining injunctions and restraining orders are not providing adequate protection to some spouse abuse victims and their families.

THEREFORE, it is the intent of this act to grant spouse abuse victims extraordinary relief in the form of preliminary injunctions and temporary restraining orders."

Cross-References

When preliminary injunction may be granted, 27-19-201.

40-4-107. Irretrievable breakdown. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to filing the petition and the prospect of reconciliation, and shall:

(a) make a finding whether the marriage is irretrievably broken; or

(b) continue the matter for further hearing not fewer than 30 or more than 60 days later or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. The court at the request of either party shall, or on its own motion may, order a conciliation conference. At the adjourned hearing the court shall make a finding whether the marriage is irretrievably broken.

(3) A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

(4) Nothing in this section shall be interpreted to affect the provisions of chapter 3 of this title, known as the Montana Conciliation Law.

History: En. 48-319 by Sec. 19, Ch. 536, L. 1975; R.C.M. 1947, 48-319.

40-4-108. Decree. (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than 6 months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored.

History: En. 48-328 by Sec. 28, Ch. 536, L. 1975; amd. Sec. 1, Ch. 174, L. 1977; R.C.M. 1947, 48-328.

40-4-109. Independence of provisions of decree or temporary order. If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended but he may move the court to grant an appropriate order.

History: En. 48-329 by Sec. 29, Ch. 536, L. 1975; R.C.M. 1947, 48-329.

40-4-110. Costs — attorney's fees. The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under chapters 1 and 4 of this title and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

History: En. 48-327 by Sec. 27, Ch. 536, L. 1975; R.C.M. 1947, 48-327.

Part 2

Support, Custody, Visitation, and Related Provisions

40-4-201. Separation agreement. (1) To promote amicable settlement of disputes between parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for disposition of any property owned by either of them, maintenance of either of them, and support, custody, and visitation of their children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the court unless it finds,

after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

(3) If the court finds the separation agreement unconscionable, it may request the parties to submit a revised separation agreement or may make orders for the disposition of property, maintenance, and support.

(4) If the court finds that the separation agreement is not unconscionable as to disposition of property or maintenance and not unsatisfactory as to support:

(a) unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

(b) if the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and state that the court has found the terms not unconscionable.

(5) Terms of the agreement set forth in the decree are enforceable by all remedies available for enforcement of a judgment, including contempt, and are enforceable as contract terms.

(6) Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides. Otherwise, terms of a separation agreement set forth in the decree are automatically modified by modification of the decree.

History: En. 48-320 by Sec. 20, Ch. 536, L. 1975; R.C.M. 1947, 48-320.

40-4-202. Disposition of property. (1) In a proceeding for dissolution of a marriage, legal separation, or disposition of property following a decree of dissolution of marriage or legal separation by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court, without regard to marital misconduct, shall, and in a proceeding for legal separation may, finally equitably apportion between the parties the property and assets belonging to either or both, however and whenever acquired and whether the title thereto is in the name of the husband or wife or both. In making apportionment, the court shall consider the duration of the marriage and prior marriage of either party; antenuptial agreement of the parties; the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and needs of each of the parties; custodial provisions; whether the apportionment is in lieu of or in addition to maintenance; and the opportunity of each for future acquisition of capital assets and income. The court shall also consider the contribution or dissipation of value of the respective estates and the contribution of a spouse as a homemaker or to the family unit. In disposing of property acquired prior to the marriage; property acquired by gift, bequest, devise, or descent; property acquired in exchange for property acquired before the marriage or in exchange for property acquired by gift, bequest, devise, or descent; the increased value of property acquired prior to marriage; and property acquired by a spouse after a decree of legal separation, the court shall consider those contributions of the other spouse to the marriage, including:

(a) the nonmonetary contribution of a homemaker;

(b) the extent to which such contributions have facilitated the maintenance of this property; and

(c) whether or not the property disposition serves as an alternative to maintenance arrangements.

(2) In a proceeding, the court may protect and promote the best interests of the children by setting aside a portion of the jointly and separately held estates of the parties in a separate fund or trust for the support, maintenance, education, and general welfare of any minor, dependent, or incompetent children of the parties.

History: En. 48-321 by Sec. 21, Ch. 536, L. 1975; R.C.M. 1947, 48-321.

40-4-203. Maintenance. (1) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

(a) lacks sufficient property to provide for his reasonable needs; and

(b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

(2) The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant facts including:

(a) the financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;

(b) the time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;

(c) the standard of living established during the marriage;

(d) the duration of the marriage;

(e) the age and the physical and emotional condition of the spouse seeking maintenance; and

(f) the ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

History: En. 48-322 by Sec. 22, Ch. 536, L. 1975; R.C.M. 1947, 48-322.

40-4-204. Child support. In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including:

(1) the financial resources of the child;

(2) the financial resources of the custodial parent;

(3) the standard of living the child would have enjoyed had the marriage not been dissolved;

(4) the physical and emotional condition of the child and his educational needs; and

(5) the financial resources and needs of the noncustodial parent.

History: En. 48-323 by Sec. 23, Ch. 536, L. 1975; R.C.M. 1947, 48-323.

40-4-205. Representation of child. The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979.

40-4-206. Payment of maintenance or support to court. (1) Upon its own motion or upon motion of either party, the court may order at any time that maintenance or support payments be made to the clerk of the district court as trustee for remittance to the person entitled to receive the payments.

(2) The clerk of the district court shall maintain records listing the amount of payments, the date payments are required to be made, and the names and addresses of the parties affected by the order.

(3) The parties affected by the order shall inform the clerk of the district court of any change of address or of other condition that may affect the administration of the order.

History: En. 48-325 by Sec. 25, Ch. 536, L. 1975; R.C.M. 1947, 48-325.

40-4-207. Assignments. The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee, or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payments to the person specified in the order. The payor may deduct from each payment a sum not exceeding $1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

History: En. 48-326 by Sec. 26, Ch. 536, L. 1975; R.C.M. 1947, 48-326.

40-4-208. Modification and termination of provisions for maintenance, support, and property disposition. (1) Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification.

(2) (a) Whenever the decree proposed for modification does not contain provisions relating to maintenance or support, modification under subsection (1) may only be made within 2 years of the date of the decree.

(b) Whenever the decree proposed for modification contains provisions relating to maintenance or support, modification under subsection (1) may only be made:

(i) upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

(ii) upon written consent of the parties.

(3) The provisions as to property disposition may not be revoked or modified by a court, except:

(a) upon written consent of the parties; or

(b) if the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

(4) Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

(5) Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump-sum payment, to the extent just and appropriate in the circumstances.

History: En. 48-330 by Sec. 30, Ch. 536, L. 1975; R.C.M. 1947, 48-330; amd. Sec. 1, Ch. 464, L. 1979.

40-4-209 and 40-4-210 reserved.

40-4-211. Jurisdiction — commencement of proceedings. (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsections (1)(a), (1)(b), or (1)(c) of this section or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d) of this section, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, those persons having physical custody of the child, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

History: En. 48-331 by Sec. 31, Ch. 536, L. 1975; amd. Sec. 11, Ch. 33, L. 1977; amd. Sec. 27, Ch. 537, L. 1977; R.C.M. 1947, 48-331.

40-4-212. Best interest of child. The court shall determine custody in accordance with the best interest of the child. The court shall consider all relevant factors including:

(1) the wishes of the child's parent or parents as to his custody;

(2) the wishes of the child as to his custodian;

(3) the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interest;

(4) the child's adjustment to his home, school, and community; and

(5) the mental and physical health of all individuals involved.

History: En. 48-332 by Sec. 32, Ch. 536, L. 1975; R.C.M. 1947, 48-332.

40-4-213. Temporary orders. (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 40-4-220(1). The court may award temporary custody under the standards of 40-4-212 after a hearing or under the standards of 40-4-212 and 40-4-220(2) before a hearing. If there is no objection, the court may act solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child require that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

History: En. 48-333 by Sec. 33, Ch. 536, L. 1975; amd. Sec. 12, Ch. 33, L. 1977; R.C.M. 1947, 48-333; amd. Sec. 1, Ch. 410, L. 1979.

40-4-214. Interviews. (1) The court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be part of the record in the case.

(2) The court may seek the advice of professional personnel, whether or not employed by the court on a regular basis. The advice given shall be in writing and made available by the court to counsel upon request. Counsel may examine as a witness any professional personnel consulted by the court.

History: **En. 48-334 by Sec. 34, Ch. 536, L. 1975; R.C.M. 1947, 48-334.**

40-4-215. Investigations and reports. (1) In contested custody proceedings and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The cost of the investigation and report shall be paid according to the final order.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16 unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

History: **En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "cost of the" before "investigation and report" in the last sentence of (1); substituted "shall be paid according to the final order" for "may be made by the county welfare department" at the end of (1).

40-4-216. Hearings. (1) Custody proceedings shall receive priority in being set for hearing.

(2) The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interest of the child.

(3) The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interest, the court may exclude the public from a custody hearing but may admit any person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

(4) If the court finds it necessary that the record of any interview, report, investigation, or testimony in a custody proceeding be kept secret to protect

the child's welfare, the court may make an appropriate order sealing the record.

History: **En. 48-336 by Sec. 36, Ch. 536, L. 1975; R.C.M. 1947, 48-336.**

40-4-217. Visitation. (1) A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger seriously the child's physical, mental, moral, or emotional health.

(2) In a proceeding for dissolution of marriage or legal separation, the court may, upon the petition of a grandparent, grant reasonable visitation rights to the grandparent of the child if the court finds, after a hearing, that the visitation would be in the best interest of the child.

(3) The court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger seriously the child's physical, mental, moral, or emotional health.

History: **En. 48-337 by Sec. 37, Ch. 536, L. 1975; R.C.M. 1947, 48-337; amd. Sec. 3, Ch. 17, L. 1979.**

40-4-218. Judicial supervision. (1) Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the court after hearing finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

(2) If both parents or all contestants agree to the order or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the county welfare department to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

History: **En. 48-338 by Sec. 38, Ch. 536, L. 1975; R.C.M. 1947, 48-338.**

40-4-219. Modification. (1) The court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of entry of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interest of the child. In applying these standards the court shall retain the custodian appointed pursuant to the prior decree unless:

(a) the custodian agrees to the modification;

(b) the child has been integrated into the family of the petitioner with consent of the custodian; or

(c) the child's present environment endangers seriously his physical, mental, moral, or emotional health and the harm likely to be caused by a change of environment is outweighed by its advantages to him.

(2) Attorney fees and costs shall be assessed against a party seeking modification if the court finds that the modification action is vexatious and constitutes harassment.

(3) A custody decree may be modified upon the death of the custodial parent pursuant to 40-4-221.

History: En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch. 410, L. 1979.

40-4-220. Affidavit practice. (1) A party seeking a temporary custody order or modification of a custody decree shall submit, together with his moving papers, an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

(2) (a) A party seeking a temporary custody order may request that the court grant a temporary assignment of custody ex parte. He shall so request in his moving papers and shall submit an affidavit showing that:

(i) no previous determination of custody has been made by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary custody were placed with the person designated by the moving party; or

(ii) although a previous determination of custody has been made, the child's present environment endangers his physical or emotional health and an immediate change of custody would serve to protect the child's physical or emotional health.

(b) If the court finds from the affidavits submitted by the moving party that a temporary assignment of custody would be in the child's best interest under the standards of 40-4-212 or that the child's physical or emotional health is endangered and would be protected by a temporary assignment of custody, the court shall make an order placing temporary custody with the person designated by the moving party or with some other person designated by the court and shall require all parties to appear and show cause within 20 days from the execution of the order why, in the case of a temporary order issued under subsection (2)(a)(i), the temporary order should not remain in effect until further order of court or, in the case of a temporary order issued under subsection (2)(a)(ii), the court should not restore the child to the custodian from whom the child was removed by the temporary order.

History: En. 48-340 by Sec. 40, Ch. 536, L. 1975; R.C.M. 1947, 48-340; amd. Sec. 3, Ch. 410, L. 1979.

40-4-221. Determination of custody upon death of custodial parent. (1) Upon the death of a parent granted custody of a child, custody shall pass to the noncustodial parent unless one or more parties named in subsection (2) request a custody hearing. The noncustodial parent shall be a party in any proceeding brought under this section.

(2) Upon the death of a parent granted custody of a child, any of the following parties may request a custody hearing and seek custody of the child:

(a) the noncustodial natural parent;

(b) the surviving spouse of the deceased custodial parent;

(c) a person nominated by the will of the deceased custodial parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of custody shall be governed by this part.

History: En. Secs. 1, 2, 3, Ch. 127, L. 1979.

40-4-222. Declaration of legislative intent — joint custody. The legislature of the state of Montana finds and declares that it is the public policy of this state to assure minor children frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy. The legislature believes that the district courts of the state of Montana have the authority to award joint custody if the court finds joint custody in the best interests of the children in the case then before the court. The intent of 40-4-222 through 40-4-225 is to establish certain guidelines for resolution of custody disputes.

History: En. Sec. 1, Ch. 416, L. 1981.

Compiler's Comments

Codification Instruction: Section 5, Ch. 416, L. 1981, provided: "Sections 1 through 4 [40-4-222 through 40-4-225] are intended to be codified as an integral part of Title 40, chapter 4, part 2."

40-4-223. Award of joint or separate custody. In custody disputes involving both parents of a minor child, custody shall be awarded to the following according to the best interests of the child as set out in 40-4-212:

(1) to both parents jointly pursuant to 40-4-224; the court, in its discretion, may require the submission to the court of a plan for the implementation of the joint custody order; or

(2) to either parent. In making an award to either parent, the court shall consider, along with the factors set out in 40-4-212, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex. The court, in its discretion, may require the submission to the court of a plan for the implementation of the custody order.

History: En. Sec. 2, Ch. 416, L. 1981.

40-4-224. Joint custody — modification — consultation with professionals. (1) Upon application of either parent or both parents for joint custody, the court shall consider whether or not joint custody is in the best interests of a minor child. If the court declines to enter an order awarding joint custody, the court shall state in its decision the reasons for denial of an award of joint custody.

(2) For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.

(3) Any order for joint custody may be modified pursuant to 40-4-219 to terminate the joint custody.

(4) The court may with the consent of both parties, at any time, direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody.

History: **En. Sec. 3, Ch. 416, L. 1981.**

40-4-225. Access to records by noncustodial parent. Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

History: **En. Sec. 4, Ch. 416, L. 1981.**

CHAPTER 5

ENFORCEMENT OF SUPPORT

Part 1 — Uniform Reciprocal Enforcement of Support Act

Section

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Part 3 — Child Support Income Deduction

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Part 1

Uniform Reciprocal Enforcement of Support Act

40-5-101. Short title. This part may be cited as the "Revised Uniform Reciprocal Enforcement of Support Act (1968)".

History: En. Sec. 42, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-82.

40-5-102. Purposes. The purposes of this part are to improve and extend by reciprocal legislation the enforcement of duties of support.

History: En. Sec. 1, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-41.

40-5-103. Definitions. (1) "Court" means the district court of this state and, when the context requires, means the court of any other state as defined in a substantially similar reciprocal law.

(2) "Duty of support" means a duty of support whether imposed or imposable by law or by order, decree, or judgment of any court, whether interlocutory or final, or whether incidental to an action for divorce, separation, separate maintenance, or otherwise and includes the duty to pay arrearages of support past due and unpaid.

(3) "Governor" includes any person performing the functions of governor or the executive authority of any state covered by this part.

(4) "Initiating state" means a state in which a proceeding pursuant to this or a substantially similar reciprocal law is commenced. "Initiating court" means the court in which a proceeding is commenced.

(5) "Law" includes both common and statutory law.

(6) "Obligee" means a person, including a state or political subdivision, to whom a duty of support is owed or a person, including a state or political subdivision, that has commenced a proceeding for enforcement of an alleged duty of support or for registration of a support order. It is immaterial if the person to whom a duty of support is owed is a recipient of public assistance.

(7) "Obligor" means any person owing a duty of support or against whom a proceeding for the enforcement of a duty of support or registration of a support order is commenced.

(8) "Prosecuting attorney" means the public official in the appropriate place who has the duty to enforce criminal laws relating to the failure to provide for the support of any person.

(9) "Register" means to file in the registry of foreign support orders.

(10) "Registering court" means any court of this state in which a support order of a rendering state is registered.

(11) "Rendering state" means a state in which the court has issued a support order for which registration is sought or granted in the court of another state.

(12) "Responding state" means a state in which any responsive proceeding pursuant to the proceeding in the initiating state is commenced.

(13) "Responding court" means the court in which the responsive proceeding is commenced.

(14) "State" includes a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which this or a substantially similar reciprocal law is in effect.

(15) "Support order" means any judgment, decree, or order of support in favor of an obligee whether temporary or final or subject to modification, revocation, or remission, regardless of the kind of action or proceeding in which it is entered.

History: En. Sec. 2, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-42.

40-5-104. Remedies additional to those now existing. The remedies herein provided are in addition to and not in substitution for any other remedies.

History: En. Sec. 3, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-43.

40-5-105. Extent of duties of support. Duties of support arising under the law of this state, when applicable under 40-5-108, bind the obligor present in this state regardless of the presence or residence of the obligee.

History: En. Sec. 4, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-44.

40-5-106. Interstate rendition. The governor of this state may:

(1) demand of the governor of another state the surrender of a person found in that state who is charged criminally in this state with failing to provide for the support of any person; or

(2) surrender on demand by the governor of another state a person found in this state who is charged criminally in that state with failing to provide for the support of any person. Provisions for extradition of criminals not inconsistent with this part apply to the demand even if the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and has not fled therefrom. The demand, the oath, and any proceedings for extradition pursuant to this section need not state or show that the person whose surrender is demanded has fled from justice or at the time of the commission of the crime was in the demanding state.

History: En. Sec. 5, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-45.

40-5-107. Conditions of interstate rendition. (1) Before making the demand upon the governor of another state for the surrender of a person charged criminally in this state with failing to provide for the support of a person, the governor of this state may require any prosecuting attorney of this state to satisfy him that at least 60 days prior thereto the obligee initiated proceedings for support under this part or that any proceeding would be of no avail.

(2) If, under a substantially similar law, the governor of another state makes a demand upon the governor of this state for the surrender of a person charged criminally in that state with failure to provide for the support of a person, the governor may require any prosecuting attorney to investigate the demand and to report to him whether proceedings for support have been initiated or would be effective. If it appears to the governor that a proceeding

would be effective but has not been initiated, he may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(3) If proceedings have been initiated and the person demanded has prevailed therein, the governor may decline to honor the demand. If the obligee prevailed and the person demanded is subject to a support order, the governor may decline to honor the demand if the person demanded is complying with the support order.

History: En. Sec. 6, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-46.

40-5-108. Choice of law. Duties of support applicable under this part are those imposed under the laws of any state where the obligor was present for the period during which support is sought. The obligor is presumed to have been present in the responding state during the period for which support is sought until otherwise shown.

History: En. Sec. 7, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-47.

40-5-109. Remedies of state or political subdivision furnishing support. If a state or a political subdivision furnishes support to an individual obligee, it has the same right to initiate a proceeding under this part as the individual obligee for the purpose of securing reimbursement for support furnished and of obtaining continuing support.

History: En. Sec. 8, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-48.

40-5-110. How duties of support enforced. All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this part, including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.

History: En. Sec. 9, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-49.

40-5-111. Jurisdiction. Jurisdiction of any proceeding under this part is vested in the district court.

History: En. Sec. 10, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-50.

40-5-112. Contents and filing of petition for support — venue. (1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor, including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition, the obligee shall also file with the court an affidavit as required by 53-4-248 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other

court of this or any other state where there is pending another action for separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement.

History: En. Sec. 11, Ch. 237, L. 1969; amd. Sec. 6, Ch. 379, L. 1977; R.C.M. 1947, 93-2601-51; amd. Sec. 3, Ch. 33, L. 1979.

40-5-113. Officials to represent obligee. If this state is acting as an initiating state, the prosecuting attorney, upon the request of the court, the department of social and rehabilitation services, the department of revenue, a county commissioner, or other local welfare officer, shall represent the obligee in any proceeding under this part. If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 12, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-52; amd. Sec. 1, Ch. 189, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "the department of revenue" following "department of social and rehabilitation services".

40-5-114. Petition for a minor. A petition on behalf of a minor obligee may be executed and filed by a person having legal custody of the minor without appointment as guardian ad litem.

History: En. Sec. 13, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-53.

40-5-115. Duty of initiating court. If the initiating court finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and that a court of the responding state may obtain jurisdiction of the obligor or his property, it shall so certify and cause three copies of the petition and its certificate and one copy of this part to be sent to the responding court. Certification shall be in accordance with the requirements of the initiating state. If the name and address of the responding court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause the copies to be sent to the state information agency or other proper official of the responding state, with a request that the agency or official forward them to the proper court and that the court of the responding state acknowledge their receipt to the initiating court.

History: En. Sec. 14, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-54.

40-5-116. Costs and fees. An initiating court shall not require payment of either a filing fee or other costs from the obligee but may request the responding court to collect fees and costs from the obligor. A responding court shall not require payment of a filing fee or other costs from the obligee, but it may direct that all fees and costs requested by the initiating court and incurred in this state when acting as a responding state, including fees for filing of pleadings, service of process, seizure of property, stenographic or duplication service, or other service supplied to the obligor, be paid in whole or in part by the obligor or by the state or political subdivision thereof. These costs or fees do not have priority over amounts due to the obligee.

History: En. Sec. 15, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-55.

40-5-117. Jurisdiction by arrest. If the court of this state believes that the obligor may flee, it may:

(1) as an initiating court, request in its certificate that the responding court obtain the body of the obligor by appropriate process; or

(2) as a responding court, obtain the body of the obligor by appropriate process. Thereupon it may release him upon his own recognizance or upon his giving a bond in an amount set by the court to assure his appearance at the hearing.

History: En. Sec. 16, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-56.

40-5-118. State information agency. (1) The state department of social and rehabilitation services is designated as the state information agency under this part.

(2) It shall:

(a) compile a list of the courts and their addresses in this state having jurisdiction under this part and transmit it to the state information agency of every other state which has adopted this or a substantially similar law. Upon the adjournment of each session of the legislature the agency shall distribute copies of any amendments to this part and a statement of their effective date to all other state information agencies.

(b) maintain a register of lists of courts received from other states and transmit copies thereof promptly to every court in this state having jurisdiction under this part; and

(c) forward to the court in this state which has jurisdiction over the obligor or his property petitions, certificates, and copies of the reciprocal enforcement of support act it receives from courts or information agencies of other states.

(3) If the state information agency does not know the location of the obligor or his property in the state and no state location service is available, it shall use all means at its disposal to obtain this information, including the examination of official records in the state and other sources such as telephone directories, real property records, vital statistics records, police records, requests for the name and address from employers who are able or willing to cooperate, records of motor vehicle license offices, requests made to the tax offices both state and federal where such offices are able to cooperate, and requests made to the social security administration as permitted by the Social Security Act, as amended.

(4) After the deposit of three copies of the petition and certificate and one copy of the reciprocal enforcement of support act of the initiating state with the clerk of the appropriate court, if the state information agency knows or believes that the prosecuting attorney is not prosecuting the case diligently, it shall inform the attorney general who may undertake the representation.

History: En. Sec. 17, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-57.

40-5-119. Duty of the court and officials of this state as responding state. (1) After the responding court receives copies of the petition, certificate, and reciprocal enforcement of support act from the initiating court, the clerk of the court shall docket the case and notify the prosecuting attorney of his action.

(2) The prosecuting attorney shall prosecute the case diligently. He shall take all action necessary in accordance with the laws of this state to enable the court to obtain jurisdiction over the obligor or his property and shall request the court to set a time and place for a hearing and give notice thereof to the obligor in accordance with law.

(3) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: En. Sec. 18, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-58.

40-5-120. Further duties of court and officials in the responding state. (1) The prosecuting attorney on his own initiative shall use all means at his disposal to locate the obligor or his property, and if because of inaccuracies in the petition or otherwise the court cannot obtain jurisdiction, the prosecuting attorney shall inform the court of what he has done and request the court to continue the case pending receipt of more accurate information or an amended petition from the initiating court.

(2) If the obligor or his property is not found in the county and the prosecuting attorney discovers that the obligor or his property may be found in another county of this state or in another state, he shall so inform the court. Thereupon the clerk of the court shall forward the documents received from the court in the initiating state to a court in the other county or to a court in the other state or to the information agency or other proper official of the other state with a request that the documents be forwarded to the proper court. All powers and duties provided by this part apply to the recipient of the documents so forwarded. If the clerk of a court of this state forwards documents to another court, he shall forthwith notify the initiating court.

(3) If the prosecuting attorney has no information as to the location of the obligor or his property, he shall so inform the initiating court.

History: En. Sec. 19, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-59.

40-5-121. Hearing and continuance. If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, may continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken.

History: En. Sec. 20, Ch. 237, L. 1969; amd. Sec. 24, Ch. 33, L. 1977; R.C.M. 1947, 93-2601-60.

40-5-122. Immunity from criminal prosecution. If at the hearing the obligor is called for examination as an adverse party and he declines to answer upon the ground that his testimony may tend to incriminate him, the court may require him to answer, in which event he is immune from criminal prosecution with respect to matters revealed by his testimony, except for perjury committed in this testimony.

History: En. Sec. 21, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-61.

40-5-123. Husband and wife communications not privileged. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this part. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

History: En. Sec. 22, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-62.

40-5-124. Rules of evidence — application. In any hearing for the civil enforcement of this part, the court is governed by the rules of evidence applicable in a civil court action in the district court. If the action is based on a support order issued by another court, a certified copy of the order shall be received as evidence of the duty of support, subject only to any defenses available to an obligor with respect to paternity (40-5-128) or to a defendant in an action or a proceeding to enforce a foreign money judgment. The determination or enforcement of a duty of support owed to one obligee is unaffected by any interference by another obligee with rights of custody or visitation granted by a court.

History: En. Sec. 23, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-63.

40-5-125. Order of support. If the responding court finds a duty of support, it may order the obligor to furnish support or reimbursement therefor and subject the property of the obligor to the order. Support orders made pursuant to this part shall require that payments be made to the clerk of the court of the responding state. The court and prosecuting attorney of any county in which the obligor is present or has property have the same powers and duties to enforce the order as have those of the county in which it was first issued. If enforcement is impossible or cannot be completed in the county in which the order was issued, the prosecuting attorney shall send a certified copy of the order to the prosecuting attorney of any county in which it appears that proceedings to enforce the order would be effective. The prosecuting attorney to whom the certified copy of the order is forwarded shall proceed with enforcement and report the results of the proceedings to the court first issuing the order.

History: En. Sec. 24, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-64.

40-5-126. Responding court to transmit copies to initiating court. The responding court shall cause a copy of all support orders to be sent to the initiating court.

History: En. Sec. 25, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-65.

40-5-127. Additional powers of responding court. In addition to the foregoing powers a responding court may subject the obligor to any terms and conditions proper to assure compliance with its orders and in particular to:

(1) require the obligor to furnish a cash deposit or a bond of a character and amount to assure payment of any amount due;

(2) require the obligor to report personally and to make payments at specified intervals to the clerk; and

(3) punish under the power of contempt the obligor who violates any order of the court.

History: En. Sec. 26, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-66.

40-5-128. Paternity. If the obligor asserts as a defense that he is not the father of the child for whom support is sought and it appears to the court that the defense is not frivolous and if both of the parties are present at the hearing or the proof required in the case indicates that the presence of either or both of the parties is not necessary, the court may adjudicate the paternity issue. Otherwise, the court may adjourn the hearing until the paternity issue has been adjudicated.

History: **En. Sec. 27, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-67.**

40-5-129. Additional duties of responding court. A responding court has the following duties which may be carried out through the clerk of the court:

(1) to transmit to the initiating court any payment made by the obligor pursuant to any order of the court or otherwise; and

(2) to furnish to the initiating court upon request a certified statement of all payments made by the obligor.

History: **En. Sec. 28, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-68.**

40-5-130. Additional duty of initiating court. An initiating court shall receive and disburse forthwith all payments made by the obligor or sent by the responding court. This duty may be carried out through the clerk of the court.

History: **En. Sec. 29, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-69.**

40-5-131. Proceedings not to be stayed — when. A responding court may not stay the proceeding or refuse a hearing under this part because of any pending or prior action or proceeding for separation, annulment, dissolution, habeas corpus, adoption, or custody in this or any other state. The court shall hold a hearing and may issue a support order pendente lite. In aid thereof it may require the obligor to give a bond for the prompt prosecution of the pending proceeding. If the other action or proceeding is concluded before the hearing in the instant proceeding and the judgment therein provides for the support demanded in the petition being heard, the court must conform its support order to the amount allowed in the other action or proceeding. Thereafter, the court shall not stay enforcement of its support order because of the retention of jurisdiction for enforcement purposes by the court in the other action or proceeding.

History: **En. Sec. 30, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-70; amd. Sec. 4, Ch. 33, L. 1979.**

40-5-132. Application of payments. A support order made by a court of this state pursuant to this part does not nullify and is not nullified by a support order made by a court of this state pursuant to any other law or by a support order made by a court of any other state pursuant to a substantially similar law or any other law, regardless of priority of issuance, unless otherwise specifically provided by the court. Amounts paid for a particular period pursuant to any support order made by the court of another state shall be credited against the amounts accruing or accrued for the same period under any support order made by the court of this state.

History: **En. Sec. 31, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-71.**

40-5-133. Effect of participation in proceeding. Participation in any proceeding under this part does not confer jurisdiction upon any court over any of the parties thereto in any other proceeding.

History: **En. Sec. 32, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-72.**

40-5-134. Intrastate application. This part applies if both the obligee and the obligor are in this state but in different counties. If the court of the county in which the petition is filed finds that the petition sets forth facts from which it may be determined that the obligor owes a duty of support and finds that a court of another county in this state may obtain jurisdiction over the obligor or his property, the clerk of the court shall send the petition and a certification of the findings to the court of the county in which the obligor or his property is found. The clerk of the court of the county receiving these documents shall notify the prosecuting attorney of their receipt. The prosecuting attorney and the court in the county to which the copies are forwarded then shall have duties corresponding to those imposed upon them when acting for this state as a responding state.

History: **En. Sec. 33, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-73.**

40-5-135. Appeals. If the attorney general is of the opinion that a support order is erroneous and presents a question of law warranting an appeal in the public interest, he may:

(1) perfect an appeal to the proper appellate court if the support order was issued by a court of this state; or

(2) if the support order was issued in another state, cause the appeal to be taken in the other state. In either case expenses of appeal may be paid on his order from funds appropriated for his office.

History: **En. Sec. 34, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-74.**

40-5-136. Additional remedies. If the duty of support is based on a foreign support order, the obligee has the additional remedies provided in the following sections.

History: **En. Sec. 35, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-75.**

40-5-137. Registration. The obligee may register the foreign support order in a court of this state in the manner, with the effect, and for the purposes herein provided.

History: **En. Sec. 36, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-76.**

40-5-138. Registry of foreign support orders. The clerk of the court shall maintain a registry of foreign support orders in which he shall file foreign support orders.

History: **En. Sec. 37, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-77.**

40-5-139. Official to represent obligee. (1) If this state is acting either as a rendering or a registering state, the prosecuting attorney, upon the request of the court, a state department of social and rehabilitation services, a county commissioner, or other local welfare official, shall represent the obligee in proceeding under this part.

(2) If the prosecuting attorney neglects or refuses to represent the obligee, the attorney general may order him to comply with the request of the court or may undertake the representation.

History: **En. Sec. 38, Ch. 237, L. 1969; amd. Sec. 48, Ch. 121, L. 1974; R.C.M. 1947, 93-2601-78.**

40-5-140. Registration procedure — notice. (1) An obligee seeking to register a foreign support order in a court of this state shall transmit to the clerk of the court:

(a) three certified copies of the order with all modifications thereof;

(b) one copy of the reciprocal enforcement of support act of the state in which the order was made; and

(c) a statement, verified and signed by the obligee, showing the post-office address of the obligee, the last known place of residence and post-office address of the obligor, the amount of support remaining unpaid, a description and the location of any property of the obligor available upon execution, and a list of the states in which the order is registered.

(2) Upon receipt of these documents the clerk of the court, without payment of a filing fee or other cost to the obligee, shall file them in the registry of foreign support orders. The filing constitutes registration under this part.

(3) Promptly upon registration the clerk of the court shall send by certified or registered mail to the obligor at the address given a notice of the registration with a copy of the registered support order and the post-office address of the obligee. He shall also docket the case and notify the prosecuting attorney of his action. The prosecuting attorney shall proceed diligently to enforce the order.

History: **En. Sec. 39, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-79.**

40-5-141. Effect of registration — enforcement procedure. (1) Upon registration the registered foreign support order shall be treated in the same manner as a support order issued by a court of this state. It has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a support order of this state and may be enforced and satisfied in like manner.

(2) The obligor has 20 days after the mailing of notice of the registration in which to petition the court to vacate the registration or for other relief. If he does not so petition, the registered support order is confirmed.

(3) At the hearing to enforce the registered support order, the obligor may present only matters that would be available to him as defenses in an action to enforce a foreign money judgment. If he shows to the court that an appeal from the order is pending or will be taken or that a stay of execution has been granted, the court shall stay enforcement of the order until the appeal is concluded, the time for appeal has expired, or the order is vacated, upon satisfactory proof that the obligor has furnished security for payment of the support ordered as required by the rendering state. If he shows to the court any ground upon which enforcement of a support order of this state may be stayed, the court shall stay enforcement of the order for an appropriate period if the obligor furnishes the same security for payment of the support ordered that is required for a support order of this state.

History: **En. Sec. 40, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-80.**

40-5-142. Uniformity of interpretation. This part shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: **En. Sec. 41, Ch. 237, L. 1969; R.C.M. 1947, 93-2601-81.**

Part 2

Administrative Enforcement of Support for Dependent Children

40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Child" or "dependent child" means any person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States.

(2) "Department" means the department of revenue.

(3) "Director" means the director of the department of revenue or his authorized representative.

(4) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

(5) "District court order" means any judgment or order of the district court of the state of Montana or an order of a court of appropriate jurisdiction of another state ordering payment of a set or determinable amount of support money.

(6) "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments under pension or retirement programs or insurance policies of any type. "Earnings" specifically includes all gain derived from capital, labor, or both combined, including profit gained through sale or conversion of capital assets.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a dependent child or children.

(8) "Public assistance" means any type of monetary or other assistance, including medical and foster care benefits, furnished to a person by a state or county agency, regardless of the original source of the assistance.

(9) "Responsible parent" means the natural or adoptive parent of a dependent child.

(10) "Support debt" means the sum created by the failure to provide support to a dependent child under the laws of this state or the decree of any court of appropriate jurisdiction ordering a sum to be paid as child support.

History: En. Sec. 1, Ch. 612, L. 1979.

40-5-202. Department of revenue — powers and duties regarding collection of support debt. (1) Whenever the department of social and rehabilitation services receives an application for public assistance on behalf of a child and it appears to the satisfaction of that department that the child has been abandoned by his parents; the child and one parent have been abandoned by the other parent; or the parent or other person who has a responsibility for the care, support, or maintenance of such child has failed or neglected to give proper care or support to the child, the department of social and rehabilitation services shall promptly refer the matter to the department of revenue for action under the provisions of this part, the abandonment or nonsupport statutes, or other appropriate statutes of this state to insure that the parent or other person responsible pays for the care, support, or maintenance of the dependent child.

(2) In the event that public assistance is furnished by a state or county agency or in instances where the department has contracted to collect support, the department shall become trustee of any cause of action of the dependent child or the person having legal custody of the dependent child to recover support due to that obligee from any person and may bring and

maintain the action either in the department's own name or in the name of the obligee.

(3) The department has the power of attorney to act in the name of any recipient of public assistance in endorsing and cashing any and all drafts, checks, money orders, or other negotiable instruments received by the department and representing support payments for children in whose behalf public assistance has been previously paid.

(4) For purposes of prosecuting any civil action pursuant to this part, the department is a real party in interest upon the payment of public assistance. No obligee shall act to prejudice the rights of the department after the receipt of public assistance.

(5) No agreement between any obligee and any obligor either relieving an obligor of any duty of support or purporting to settle past, present, or future support obligations either as settlement or prepayment may act to reduce or terminate any rights of the department to recover from that obligor for support debt provided unless the department has consented to the agreement in writing.

(6) The department may petition a court for modification of any court order on the same basis as a party to that action would have been entitled to do.

(7) The department shall be subrogated to the right of the child or children or person having the care, custody, and control of the child or children to maintain any civil action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus spent.

(8) If a district court orders an amount of support to be paid by a responsible parent, the department shall be subrogated to the debt created by the order and the money judgment shall be determined to be in favor of the department. This subrogation shall apply to temporary spouse support orders and family maintenance orders up to the amount paid by the department in public assistance money to or for the benefit of a dependent child or children but allocated to the benefit of the children on the basis of providing necessities for the caretaker of the children.

(9) The department may adopt and enforce such rules as may be necessary to carry out the provisions of this part.

(10) The department, for the purposes mentioned in this part, through its director or the director's authorized representatives, may administer oaths to certify official acts, issue subpoenas, and compel witnesses and the production of books, accounts, documents, and evidence.

History: En. Sec. 2, Ch. 612, L. 1979; amd. Sec. 1, Ch. 188, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "orders" following "district court" in the first line of (8); substituted "the director's" for "his" in (10).

40-5-203. Support enforcement services. (1) The department may accept applications for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against persons owing a duty to pay support.

(2) The department may establish by rule reasonable standards necessary to limit applications for support enforcement services. These standards shall

take into account the earnings, income, and other resources already available to support the person for whom a support obligation exists.

(3) The department may charge a fee as compensation for services rendered in establishment of or enforcement of support obligations. This fee shall be agreed on in writing with the parent, custodian, or guardian of the person for whom a support obligation is owed or that person if no parent, custodian, or guardian exists. An initiation fee as a portion of the collection fee may be charged the applicant by the department. The department shall by rule establish reasonable fees for support enforcement services, and the schedule of fees shall be made available to all applicants for support enforcement services. The department may, upon a showing of necessity, waive or defer any such fee.

History: **En. Sec. 3, Ch. 612, L. 1979.**

40-5-204. Cooperation by person having custody of child. Any person having the care, custody, or control of any dependent child or children shall cooperate with the department in establishing the paternity of such child and obtaining support payments.

History: **En. Sec. 4, Ch. 612, L. 1979.**

40-5-205. Payment of support money collected to support enforcement and collections unit — notice. If written notice by the department is given to the responsible person or to the clerk of the court, if appropriate, that the children for whom a support obligation exists are receiving public assistance, then any support money paid by the person or persons responsible for support as a result of any action shall be paid through the support enforcement and collections unit of the department of revenue.

History: **En. Sec. 5, Ch. 612, L. 1979.**

40-5-206. Central unit for information and administration — cooperation enjoined — availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, to coordinate and supervise departmental activities in relation to deserting parents, and to assure effective cooperation with law enforcement agencies.

(2) To effectuate the purposes of this section, the director may request from state, county, and local agencies all information and assistance as authorized by this part. All state, county, and city agencies, officers, and employees shall cooperate in the location of parents who have abandoned or deserted or are failing to support children receiving public assistance and shall on request supply the department with all information available relative to the location, income, and property of the parents.

(3) Any records established pursuant to the provisions of this section are available only to the department, county attorneys, and courts having jurisdiction in support and abandonment proceedings or actions or agencies in other states engaged in the enforcement of support of minor children as authorized by the rules of the department and by the provisions of the federal Social Security Act.

History: **En. Sec. 10, Ch. 612, L. 1979.**

40-5-207 through 40-5-210 reserved.

40-5-211. Petition for support order by married parent with minor children receiving public assistance. (1) Any married parent with minor children, natural or legally adopted, who is receiving public assistance in the absence of a support order may apply to the district court of the county in which the parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for the parent's support and the support of the parent's minor children by filing in the county a petition setting forth the facts and circumstances upon which the parent relies for the order.

(2) If it appears to the satisfaction of the court that the parent is without funds to employ counsel, the department may file a petition on behalf of the parent. If satisfied that a just cause exists, the court shall direct that a citation be issued to the spouse requiring that spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter.

History: En. Sec. 6, Ch. 612, L. 1979.

40-5-212. Petition for support order by married parent with minor children receiving public assistance — powers of court. (1) After hearing the petition for an order of support, the court shall make an order granting or denying it and fixing the terms and amount of the support.

(2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, make such decree or orders as are equitable in view of the circumstances of both parties, and punish violations as other contempts are punished.

History: En. Sec. 7, Ch. 612, L. 1979.

40-5-213. Financial statements by parent whose absence is basis of application for public assistance — penalty. (1) Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall complete a statement, under oath, of his current monthly income, his total income over the past 36 months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses, and all other information pertinent to determining his ability to support his children. The statement shall be provided upon a demand made by the department. If assistance based upon the application is granted on behalf of the child, additional statements shall be filed as required by the department until the child is no longer receiving public assistance.

(2) Failure to comply with this section is a misdemeanor.

History: En. Sec. 8, Ch. 612, L. 1979.

40-5-214. Scale of suggested minimum contributions. (1) The department shall establish a scale of suggested minimum contributions to assist counties and courts in determining the amount that a parent should be expected to contribute toward the support of his child under this part. The scale shall:

(a) include consideration of gross income;

(b) authorize an expense deduction for determining net income;

(c) designate other available resources to be considered;

(d) specify the circumstances which should be considered in reducing support contributions on the basis of hardship.

(2) The department shall accept and compile pertinent and reliable information from any available source in order to establish a minimum scale of suggested contributions. Copies of the scale shall be made available to courts, county offices, county attorneys, and upon request, to any other state or county officer or agency engaged in the administration or enforcement of this part. Attorneys admitted to practice in Montana may have access to the minimum scale of suggested contribution.

(3) No county, court, officer, or agency may be required to use this scale.

History: En. Sec. 9, Ch. 612, L. 1979.

40-5-215 through 40-5-220 reserved.

40-5-221. Debt to state by natural or adoptive parents — limitations. (1) Except as provided in subsection (2), any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing the state of Montana by the responsible parent or parents in an amount equal to the amount of public assistance money so paid. In the case of an adoptive parent or parents, no debt for public assistance paid may accrue prior to the date of adoption.

(2) Where there has been a district court order established, the debt shall be limited to the amount provided for by the order.

(3) Where a child has been placed in foster care, and a written agreement for payment of support has been entered into by the responsible parent or parents and any state agency, the debt shall be limited to the amount provided for in the agreement. However, if a court order for support is or has been entered, the provisions of the order shall prevail over the agreement.

(4) The department shall adopt rules based on ability to pay, with respect to the level of support to be provided for in such agreements or modifications of such agreements based on changed circumstances.

History: En. Sec. 11, Ch. 612, L. 1979.

40-5-222. Support debt based upon subrogation to or assignment of judgment — notice — content — action to collect. (1) The department may issue a notice of a support debt accrued or accruing based upon subrogation to or assignment of the judgment created by a district court order. The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action in accordance with the provisions of the Montana Rules of Civil Procedure, demanding payment within 30 days of the date of receipt.

(2) The notice of debt shall include:

(a) a statement of the support debt accrued or accruing, computable on the amount required to be paid under any district court order to which the department is subrogated or has an assigned interest;

(b) a statement that the property of the debtor is subject to collection action;

(c) a statement that the property is subject to distraint and seizure and sale;

(d) a statement that the net proceeds will be applied to the satisfaction of the support debt;

(e) a statement that the debtor is entitled to a fair hearing.

(3) Action to collect the subrogated or assigned support debt by distraint and seizure and sale shall be lawful after 30 days from the date of service upon the debtor or 30 days from the receipt or refusal by the debtor of the notice of debt.

(4) Within 20 days of the date of service of notice of support debt, the debtor may request a fair hearing as provided in 40-5-226.

History: En. Sec. 12, Ch. 612, L. 1979; amd. Sec. 2, Ch. 188, L. 1981; amd. Sec. 41, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 188 added subsections (2)(e) and (4).

Chapter 439 increased 20 days to 30 days in (1) and in (3) in two places.

40-5-223. Notice of support liability based upon payment of public assistance — notice — contents — collection warrant — fair hearing. (1) In the absence of a district court order the department may issue a notice of a support liability accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or children. The notice of liability shall be served upon the responsible parent in the manner prescribed for the service of summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure.

(2) The notice of liability shall include:

(a) a statement of the support debt accrued or accruing, computable on the basis of the amount of public assistance previously paid and to be paid in the future;

(b) a statement of the amount of the monthly public assistance payment;

(c) a statement of the name of the recipient and the name of the child or children for whom assistance is being paid;

(d) a demand for immediate payment of the support debt or, in the alternative, a demand that the responsible parent make answer within 30 days of the date of service to the department stating defenses to liability under 40-5-221;

(e) a statement that if no answer is made on or before 30 days from the date of the service the support debt shall be assessed and determined subject to computation and is subject to collection action;

(f) a statement that the property of the responsible parent will be subject to distraint and seizure and sale.

(3) If no answer is had by the department to the notice of liability on or before 30 days of the date of service, the support debt shall be assessed and determined subject to the computation and the department may issue a warrant for distraint authorizing a collection action under this part.

(4) If the responsible parent, within 30 days of the date of service of notice of liability, makes answer to the department alleging defenses to liability under 40-5-221, the responsible parent may receive a fair hearing pursuant to 40-5-226. The decision of the department in the hearing shall establish the obligation of the responsible parent, if any, for repayment of

public assistance funds spent to date as an assessed and determined support debt.

History: En. Sec. 13, Ch. 612, L. 1979; amd. Sec. 42, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days wherever it appears; and substituted "the department may issue a warrant for distraint" for "the department shall issue a warrant of distraint" near the end of subsection (3).

40-5-224. Finding of support liability based upon payment of public assistance — warrant for distraint — bond to release warrant — action to collect. (1) If the department reasonably believes that the parent is not a resident of this state or is about to move from this state or has concealed himself, absconded, absented himself or has removed or is about to remove, secrete, waste, or otherwise dispose of property which could be made subject to collection action to satisfy the support debt, the department may issue a warrant for distraint pursuant to 40-5-241 during the pendency of the fair hearing or thereafter, whether or not appealed. No further action may be taken on the warrant until final determination after fair hearing and/or appeal. The department shall in such cases make and file in the record of the fair hearing an affidavit stating the reasons upon which the belief is founded. The responsible parent may furnish a bond, not to exceed the amount of the support debt, during pendency of the hearing or thereafter, and in such case warrants issued shall be released. If the decision resulting from the hearing is in favor of the responsible parent, all warrants issued shall be released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from the hearing.

History: En. Sec. 14, Ch. 612, L. 1979; amd. Sec. 43, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the first sentence of subsection (1).

40-5-225. Notice and finding of financial responsibility of responsible parent — administrative procedure. (1) In lieu of the procedures provided in 40-5-223 and 40-5-224, the department may, in the absence of a district court order, serve on the responsible parent a notice and finding of financial responsibility requiring a responsible parent to appear and show cause at a hearing held by the department why the finding of liability and the amount of support liability should not be finally ordered. This notice and finding shall relate to the support debt accrued or accruing under this part and/or Title 53, chapter 4, including periodic payments to be made in the future for the period of time any child of the responsible parent is in need. The hearing shall be held pursuant to this part and the rules of the department, which shall provide for a fair hearing.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action, in accordance with the provisions of the Montana Rules of Civil Procedure. Any responsible parent who objects to all or any part of the notice and finding shall have the right for not more than 30 days from the date of service to request in writing a hearing, notice of which shall be served upon the

department personally or by registered or certified mail. If no request is made, the notice and finding of financial responsibility becomes final. If a request is made, the execution of notice and finding of financial responsibility shall be stayed pending the decision on such hearing or any direct appeal to the courts from the decision.

(3) The notice and finding of financial responsibility shall include:

(a) the amount the department has determined the responsible parent owes, the support debt accrued or accruing, and, as appropriate, the amount to be paid thereon each month, all computable on the basis of the amount of the monthly public assistance payment previously paid or need alleged and the ability of the responsible parent to pay all or any portion of the debt;

(b) a statement of the name of the recipient or custodian and the name of any child for whom assistance is being paid or need is alleged; or a statement of the amount of periodic future support payments for which financial responsibility is found;

(c) a statement that the responsible parent may object to all or any part of the notice and finding and request a hearing to show cause why he should not be determined to be liable for any or all of the past and future debt determined and the amount to be paid thereon;

(d) a statement that if the responsible parent fails to request a hearing, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed, determined, and ordered by the department and that this debt is subject to collection action;

(e) a statement that the property of the debtor, without further advance notice or hearing, will be subject to distraint and seizure and sale to satisfy the debt.

History: En. Sec. 15, Ch. 612, L. 1979; amd. Sec. 44, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days in the middle of subsection (2).

40-5-226. Administrative hearing — nature — place — time — determinations — failure to appear — entry of findings. (1) The administrative hearing is defined as a "contested case".

(2) The administrative hearing may be held in the county of residence or other county convenient to the responsible parent.

(3) If a hearing is requested, it shall be scheduled within 30 days.

(4) The hearing officer shall determine the liability and responsibility, if any, of the alleged responsible parent under 40-5-221 and shall also determine the amount of periodic payments to be made to satisfy past, present, or future liability under 40-5-221. In making these determinations, the hearing officer shall include in his consideration the scale of suggested minimum contributions adopted under 40-5-214.

(5) If the responsible parent fails to appear at the hearing, upon a showing of valid service, the hearing officer shall enter a decision and order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed, determined, and subject to collection action. Within 30 days of entry of the order, the responsible parent

may petition the department to vacate the order upon a showing of any of the grounds enumerated in the Montana Rules of Civil Procedure.

(6) The hearing officer shall, within 20 days of the hearing, enter findings, conclusions, and a final decision determining liability and responsibility and/or future periodic support payments. The determination of the hearing officer entered pursuant to this section shall be entered as an order unless such findings are set aside pursuant to 40-5-253 and shall limit the support debt under 40-5-221 to the amounts stated in the decision.

(7) The decision establishing liability and future periodic support payments is superseded upon entry of a district court order for support to the extent the district court order is inconsistent with the hearing order or decision. In the absence of a district court order the responsible parent may petition the department for issuance of an order to appear and show cause based on a showing of good cause and material change of circumstances to require the other party to appear and show cause why the decision previously entered should not be prospectively modified. The order to appear and show cause together with a copy of the affidavit upon which the order is based shall be served by the petitioning party on the nonmoving party in the manner of a summons in a civil action. A hearing shall be set not less than 15 or more than 30 days from the date of service, unless extended for good cause shown. Prospective modification may be ordered but only upon a showing of good cause and material change of circumstances.

(8) The department, in its original determinations, and the hearing officer, in making determinations based on objections to original determinations or on petitions to modify, shall consider the standards promulgated for determination of support payments used by the district court of the county of residence of the responsible parent.

(9) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this part without further necessity of action by the hearing officer.

History: En. Sec. 16, Ch. 612, L. 1979; amd. Sec. 45, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 20 days to 30 days in subsection (5).

40-5-227 through 40-5-240 reserved.

40-5-241. Warrant for distraint. Thirty-one days after receipt or refusal of notice of debt under provisions of 40-5-222 or 31 days after service of notice of debt or as otherwise appropriate under the provisions of 40-5-223 and 40-5-224, the department may issue a warrant for distraint based on the amount of the support debt. The warrant is subject to the provisions of 15-1-701, 15-1-704, 15-1-705, 15-1-708, and 15-1-709, with references to "tax" taken to mean "support debt" and references to "taxpayer" taken to mean "person owing the support debt", as well as the provisions of this part. Notwithstanding the provisions of subsection (3) of 15-1-705, an appeal from a hearing may be made directly to district court, as provided in 40-5-253, and is not appealable to the state tax appeal board.

History: En. Sec. 17, Ch. 612, L. 1979; amd. Sec. 46, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Increased 21 days to 31 days in two places in the first sentence; substituted, at the end of the first sentence, "the department may issue a warrant for distraint based on the amount of the support debt" for a provision allowing the department to issue an abstract of a final order. The abstract would be in the form of a warrant and would direct the sheriff to sell the property of the person owing the support debt; added the last two sentences to the section; and deleted former subsections (2) through (4), the text of which may be found in sec. 17, Ch. 612, L. 1979.

40-5-242. Civil liability upon failure to comply with warrant or to honor assignment of wages. Should any person, firm, corporation, association, political subdivision, or department of the state fail or refuse to deliver property pursuant to the order; or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person; or fail or refuse to surrender upon demand property distrained under 40-5-241 or fail or refuse to honor an assignment of wages presented by the department, the person, firm, corporation, association, political subdivision, or department of the state is liable to the department in an amount equal to 100% of the value of the debt which is the basis of the distraint or assignment of wages or the value of the distrained property, whichever is less, together with costs, interest, and reasonable attorney fees.

History: **En. Sec. 18, Ch. 612, L. 1979.**

40-5-243. Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision, or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department plus $100, that person, firm, corporation, association, political subdivision, or department of the state may, without liability under this part, release the excess to the debtor.

History: **En. Sec. 19, Ch. 612, L. 1979.**

40-5-244. Banks and savings and loan associations — service effective only as to branch office served. In the case of a bank, bank association, mutual savings bank, or savings and loan association maintaining branch offices, service of any notice or document authorized by this part is only effective as to the accounts, credits, or other personal property of the debtor in the particular branch upon which service is made.

History: **En. Sec. 20, Ch. 612, L. 1979.**

40-5-245. Satisfaction of debt after levy on property — redemption. Any person owning real property or any interest in real property against which a warrant for distraint has been issued and levied upon may pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the department. Upon full payment the property shall be restored to him and all further proceedings on the warrant shall cease. The person shall also have the right within 240 days after sale of property levied upon to redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the courts of this state.

History: **En. Sec. 21, Ch. 612, L. 1979; amd. Sec. 47, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the first sentence; and substituted "upon full payment the property shall be restored to him" for "upon full payment the sheriff shall restore the property to him" in the second sentence of the section.

40-5-246. Release of distraint and return of seized property — effect. The department may at any time release a distraint on all or part of the property of the debtor or order the return of seized property without liability, if assurance of payment is determined to be adequate by the department or if the action will facilitate the collection of the debt. The release or return does not operate to prevent future action to collect from the same or other property.

History: **En. Sec. 23, Ch. 612, L. 1979; amd. Sec. 48, Ch. 439, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "order the return of seized property" for "order the sheriff to return seized property" in the middle of the first sentence.

40-5-247 through 40-5-250 reserved.

40-5-251. Debt payment schedule. The department may at any time after notice to the debtor set or reset a level and schedule of payments to be paid upon the debt consistent with the income, earning capacity, and resources of the debtor.

History: **En. Sec. 22, Ch. 612, L. 1979.**

40-5-252. Interest on debts due — waiver. Interest on any support debt due and owing to the department at the statutory interest rate payable on judgments recovered in the courts of this state under 40-5-221 may be collected by the department. No provision of this part may be construed to require the department to maintain interest balance due accounts, and interest may be waived by the department, if waiver would facilitate the collection of the debt.

History: **En. Sec. 24, Ch. 612, L. 1979.**

40-5-253. Administrative findings and order — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review but that administrative remedies be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Such review shall be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the department that administrative remedies have not been exhausted, the district court shall refuse review until such remedies are exhausted.

(2) Nothing in this part may be construed to abridge or in any way affect the defendant's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

History: **En. Sec. 25, Ch. 612, L. 1979.**

40-5-254. Statutory limitations. Debts ensuing as a result of determinations made through the administrative procedures described in this part are subject to statutory limitations as set forth in Title 27, chapter 2.

History: **En. Sec. 26, Ch. 612, L. 1979.**

40-5-255. Charging off child support debts as uncollectible. Any support debt due the department from a responsible parent which the department determines uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted as an asset. In the event a warrant for distraint has been filed and the support debt has subsequently been charged off as uncollectible, the department shall issue a release of lien. At any time after 6 years from the date a support debt was incurred, the department may charge off as uncollectible any support debt upon which the department finds there is no available, practical, or lawful means by which the debt may be collected. No proceedings or action under the provisions of this part may be begun after expiration of the 6-year period to institute collection of a support debt. Nothing herein may be construed to render invalid or nonactionable a warrant for distraint filed with the clerk of court prior to the expiration of the 6-year period or an assignment of earnings executed prior to the expiration of the 6-year period.

History: En. Sec. 27, Ch. 612, L. 1979; amd. Sec. 49, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" whenever it appeared.

40-5-256. Employee debtor rights protected — limitation. No employer may discharge or prejudice an employee for reason that an assignment of earnings has been presented in settlement of a support debt or that a warrant for distraint has been served against the employee's earnings. This provision does not apply if more than three warrants are served upon the same employer within any period of 12 consecutive months.

History: En. Sec. 28, Ch. 612, L. 1979; amd. Sec. 50, Ch. 439, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "warrant for distraint" for "warrant of distraint" in the middle of the section.

40-5-257. Assignment of earnings to be honored — effect. Any person, firm, corporation, association, political subdivision, or department of the state employing a person owing a support debt or obligation shall honor, according to its terms, a duly executed assignment of earnings, whether executed voluntarily or pursuant to court order, presented by the department as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself are applicable whether the earnings are to be paid presently or in the future and continue in force until released in writing by the department. Payment of money pursuant to an assignment of earnings presented by the department serves as full acquittance under any contract of employment. The state shall defend and hold harmless any action taken pursuant to the assignment of earnings. The department shall be released from liability for improper receipt of money under an assignment of earnings upon return of any money so received.

History: En. Sec. 29, Ch. 612, L. 1979.

Part 3

Child Support Income Deduction

Part Compiler's Comments

1981 Title: The title to Ch. 171, L. 1981 (SB 164), read: "An act to provide for the payment of delinquent court-ordered child support by deduction of payments from the income of the obligor."

40-5-301. Short title. This part may be cited as the "Child Support Income Deduction Act of 1981".

History: **En. Sec. 1, Ch. 171, L. 1981.**

40-5-302. Purpose. The purpose of this part is to provide a direct method of deducting money from a person's income for the payment of child support if that person has been delinquent in the payment of court-ordered child support.

History: **En. Sec. 2, Ch. 171, L. 1981.**

40-5-303. Petition for income deduction — who may initiate. A petition for an income deduction for the payment of delinquent child support payments may be made by:

(1) the person named as the recipient of the child support payments in the child support order;

(2) the child or the guardian of the child named in the child support order; or

(3) the department of revenue or the department of social and rehabilitation services of the state of Montana.

History: **En. Sec. 3, Ch. 171, L. 1981.**

40-5-304. When child support payments considered delinquent. (1) Nonpayment of child support required by any order of a district court or by a similar order of a court of another jurisdiction becomes delinquent under this part when the amount owed is equal to 3 months of child support payments.

(2) Child support payments may be considered delinquent under this part only in reference to a court order setting child support payments.

History: **En. Sec. 4, Ch. 171, L. 1981.**

40-5-305. Notice. On petition for income deductions for payment of delinquent child support, the district court shall cause notice to be served upon the obligor, stating that if the delinquency is not discharged within 15 days, the court will order an income deduction for the payment of the delinquent child support and for the payment of current child support as it becomes due and payable. The notice shall also state that the obligor may contest the allegation that child support payments are delinquent.

History: **En. Sec. 5, Ch. 171, L. 1981.**

40-5-306. Discharge of delinquency. If the obligor pays the total amount of child support due and payable within the 15 days specified in 40-5-305, no order for deduction may issue. This discharge of delinquency does not affect or otherwise limit any action as a result of any subsequent delinquencies.

History: **En. Sec. 6, Ch. 171, L. 1981.**

40-5-307. Delinquency of child support denied — hearing. If the obligor responds to the notice and denies that child support payments are delinquent, the district court shall hold a hearing to determine whether or not there is a deficiency in child support payments sufficient to be delinquent under 40-5-304.

History: **En. Sec. 7, Ch. 171, L. 1981.**

40-5-308. Order for deduction from income for child support payments. (1) If the obligor fails to respond to notice within 15 days or if the district court determines that the obligor is delinquent in payment of child support as provided in 40-5-304, the district court shall issue an order to the obligor's employer ordering a deduction from the obligor's wages or salary for the payment of child support.

(2) The order shall state:

(a) the action involved;

(b) the total amount of back child support due and the amount of each court-ordered installment of child support;

(c) the amount to be deducted from the wages or salary of the obligor each pay period and the amount, if any, allowed to the employer under subsection (2) of 40-5-309 as a fee for handling the deduction;

(d) the length of time the order is to remain in effect, if ascertainable; and

(e) to whom the deduction is to be made payable and where it is to be forwarded by the employer.

History: En. Sec. 8, Ch. 171, L. 1981.

40-5-309. Amount to be deducted from income. (1) The amount of money to be deducted each pay period from the obligor's income shall be:

(a) (i) the amount of money necessary to pay current installments of child support as they become due and payable; plus

(ii) the amount of money which, when deducted in equal amounts each payday, will pay off all outstanding child support payments delinquent within 2 years; or

(b) the maximum amount allowable by federal garnishment law if the sum provided in subsection (1)(a) exceeds that amount.

(2) The district court may allow a fee of not to exceed $5 per deduction, which the employer may deduct from the obligor's wages or salary for the expense of administering the deduction.

(3) The child support income deduction shall cease when there is no past-due child support owing unless the district court orders continued income deductions for payment of child support installments as they become due and payable.

History: En. Sec. 9, Ch. 171, L. 1981.

40-5-310. Priority of income deduction. An order for the deduction of income for the payment of delinquent child support payments takes precedence over any:

(1) assignment of wages or salary;

(2) voluntary deductions from the obligor's wages or salary; and

(3) other court-ordered garnishment of wages or salary.

History: En. Sec. 10, Ch. 171, L. 1981.

40-5-311. Remedy not exclusive. The remedy provided in this part for the collection of unpaid child support is not exclusive. This part provides a remedy in addition to all other remedies in law available to obligees of unpaid child support.

History: En. Sec. 11, Ch. 171, L. 1981.

CHAPTER 6

PARENT AND CHILD

Part 1 — Uniform Parentage Act

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Part 1

Uniform Parentage Act

40-6-101. Short title. This part may be cited as the "Uniform Parentage Act".

History: En. 61-301 by Sec. 1, Ch. 512, L. 1975; R.C.M. 1947, 61-301.

40-6-102. Parent and child relationship defined. As used in this part, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

History: En. 61-302 by Sec. 2, Ch. 512, L. 1975; R.C.M. 1947, 61-302.

40-6-103. Relationship not dependent on marriage. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

History: En. 61-303 by Sec. 3, Ch. 512, L. 1975; R.C.M. 1947, 61-303.

40-6-104. How parent and child relationship established. The parent and child relationship between a child and:

(1) the natural mother may be established by proof of her having given birth to the child or under this part;

(2) the natural father may be established under this part;

(3) an adoptive parent may be established by proof of adoption.

History: En. 61-304 by Sec. 4, Ch. 512, L. 1975; R.C.M. 1947, 61-304.

40-6-105. Presumption of paternity. (1) A man is presumed to be the natural father of a child if:

(a) he and the child's natural mother are or have been married to each other and the child is born during the marriage or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce or after a decree of separation is entered by a court;

(b) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce; or

(ii) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(c) after the child's birth, he and the child's natural mother have married or attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and:

(i) he has acknowledged his paternity of the child in writing filed with the department of health and environmental sciences or with the district court for the county where he resides; or

(ii) with his consent, he is named as the child's father on the child's birth certificate; or

(iii) he is obligated to support the child under a written voluntary promise or by court order;

(d) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child; or

(e) he acknowledges his paternity of the child in a writing filed with the department of health and environmental sciences or with the district court of the county where he resides, which court or department shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the department of health and environmental sciences or with the district court of the county where the acknowledgment was filed. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted.

(2) A presumption under this section may be rebutted in an appropriate action by a preponderance of the evidence.

History: **En. 61-305 by Sec. 5, Ch. 512, L. 1975; R.C.M. 1947, 61-305.**

40-6-106. Artificial insemination. (1) If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent must be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination and file the husband's consent with the department of health and environmental sciences, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so does not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for good cause shown.

(2) The donor of semen provided to a licensed physician for use in artificial insemination of a married woman other than the donor's wife is treated in law as if he were not the natural father of a child thereby conceived.

History: **En. 61-306 by Sec. 6, Ch. 512, L. 1975; R.C.M. 1947, 61-306.**

40-6-107. Determination of father and child relationship — who may bring action. (1) Any interested party may bring an action for the purpose of determining the existence or nonexistence of the father and child relationship presumed pursuant to 40-6-105.

(2) An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under 40-6-105 may be brought by the child, the mother or personal representative of the child, the department of social and rehabilitation services or its appropriate local affiliate, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor.

(3) Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with 40-6-114(2), between an alleged or presumed father and the mother or child does not bar an action under this section.

(4) If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

History: En. 61-307 by Sec. 7, Ch. 512, L. 1975; R.C.M. 1947, 61-307.

40-6-108. Statute of limitations. (1) An action may be commenced:

(a) at any time for the purpose of declaring the existence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1);

(b) for the purpose of declaring the nonexistence of the father and child relationship presumed under subsection (a), (b), or (c) of 40-6-105(1), only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

(2) After the presumption has been rebutted, paternity of the child by another man may be determined in the same action if he has been made a party.

(3) An action to determine the existence or nonexistence of the father and child relationship as to a child who has no presumed father under 40-6-105 may not be brought later than 3 years after the birth of the child.

(4) Sections 40-6-107 and 40-6-108 do not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship or otherwise.

(5) After the conclusion of an adoption proceeding under chapter 8, Title 40, no further action to declare the existence or nonexistence of the father and child relationship of the adopted child may be commenced, except as provided in 40-8-112.

History: En. 61-308 by Sec. 8, Ch. 512, L. 1975; R.C.M. 1947, 61-308; amd. Sec. 5, Ch. 33, L. 1979.

40-6-109. Jurisdiction — venue. (1) The district court has jurisdiction of an action brought under this part. The action may be joined with an action for dissolution, annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this part, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana Rules of Civil Procedure.

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

History: En. 61-309 by Sec. 9, Ch. 512, L. 1975; amd. Sec. 21, Ch. 33, L. 1977; R.C.M. 1947, 61-309.

40-6-110. Parties. The child shall be made a party to the action. If he is a minor, he shall be represented by his general guardian or a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the department of social and rehabilitation services or the appropriate county welfare department as guardian ad litem for the child. The natural mother, each man presumed to be the father under 40-6-105, and each man alleged to be the natural father shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard. The court may align the parties.

History: En. 61-310 by Sec. 10, Ch. 512, L. 1975; R.C.M. 1947, 61-310.

40-6-111. Pretrial proceedings. (1) As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, an informal hearing shall be held. The court may order that the hearing be held before a referee. The public shall be barred from the hearing. A record of the proceeding shall be kept.

(2) Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness who has been granted immunity to obey an order to testify or produce evidence is a civil contempt of the court.

History: En. 61-311 by Sec. 11, Ch. 512, L. 1975; R.C.M. 1947, 61-311.

40-6-112. Blood tests. (1) The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests. The tests shall be performed by an expert qualified as an examiner of blood types, appointed by the court.

(2) The court, upon reasonable request by a party, shall order that independent tests be performed by other experts qualified as examiners of blood types.

(3) In all cases the court shall determine the number and qualifications of the experts.

History: En. 61-312 by Sec. 12, Ch. 512, L. 1975; R.C.M. 1947, 61-312.

40-6-113. Evidence relating to paternity. Evidence relating to paternity may include:

(1) evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

(2) an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

(3) blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

(4) medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

(5) all other evidence relevant to the issue of paternity of the child.

History: En. 61-313 by Sec. 13, Ch. 512, L. 1975; R.C.M. 1947, 61-313.

40-6-114. Pretrial recommendations. (1) On the basis of the information produced at the pretrial hearing, the judge or referee conducting the hearing shall evaluate the probability of determining the existence or nonexistence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(a) that the action be dismissed with or without prejudice;

(b) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the judge or referee conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge or referee conducting the hearing shall consider the best interest of the child in the light of the factors enumerated in 40-6-116(5), discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or nonpaternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(c) that the alleged father voluntarily acknowledge his paternity of the child.

(2) If the parties accept a recommendation made in accordance with subsection (1), judgment shall be entered accordingly.

(3) If a party refuses to accept a recommendation made under subsection (1) and blood tests have not been taken, the court shall require the parties to submit to blood tests, if practicable. Thereafter the judge or referee shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

(4) If the scientific evidence resulting from the blood tests conclusively shows that the defendant could not have been the father, then the instant action shall be dismissed.

(5) The guardian ad litem may accept or refuse to accept a recommendation under this section.

(6) The informal hearing may be terminated and the action set for trial if the judge or referee conducting the hearing finds unlikely that all parties would accept a recommendation he might make under subsection (1) or (3).

History: **En. 61-314 by Sec. 14, Ch. 512, L. 1975; R.C.M. 1947, 61-314.**

40-6-115. Civil action. (1) An action under this part is a civil action governed by the rules of civil procedure. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Sections 40-6-111(2), 40-6-112, and 40-6-113 apply to all actions brought under this part.

(2) Testimony relating to sexual access to the mother by an unidentified man at any time or by an identified man at a time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother.

(3) In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the alleged father has undergone and made available to the court blood tests, the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

History: **En. 61-315 by Sec. 15, Ch. 512, L. 1975; R.C.M. 1947, 61-315.**

40-6-116. Judgment or order. (1) The judgment or order of the court determining the existence or nonexistence of the parent and child relationship is determinative for all purposes.

(2) If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a substitute birth certificate be issued under 40-6-123.

(3) The judgment or order may contain any other provision directed against the appropriate party to the proceeding concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

(4) Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump-sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

(5) In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including:

(a) the needs of the child;

(b) the standard of living and circumstances of the parents;

(c) the relative financial means of the parents;
(d) the earning ability of the parents;
(e) the need and capacity of the child for education, including higher education;
(f) the age of the child;
(g) the financial resources and the earning ability of the child;
(h) the responsibility of the parents for the support of others; and
(i) the value of services contributed by the custodial parent.

History: En. 61-316 by Sec. 16, Ch. 512, L. 1975; R.C.M. 1947, 61-316.

40-6-117. Enforcement of judgment or order. (1) If existence of the father and child relationship is declared or paternity or a duty of support has been acknowledged or adjudicated under this part or under prior law, the court may order support payments to be made to the mother, the clerk of the court, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

(2) Willful failure to obey the judgment or order of the court is a civil contempt of the court. All remedies for the enforcement of judgments apply.

History: En. 61-318 by Sec. 18, Ch. 512, L. 1975; R.C.M. 1947, 61-318.

40-6-118. Modification of judgment or order. The court has continuing jurisdiction to modify or revoke a judgment or order:

(1) for future education and support; and

(2) with respect to matters listed in 40-6-116(3), 40-6-116(4), and 40-6-117(2), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under 40-6-116(4) may specify that the judgment or order may not be modified or revoked.

History: En. 61-319 by Sec. 19, Ch. 512, L. 1975; R.C.M. 1947, 61-319.

40-6-119. Rights to counsel — free transcript on appeal. (1) At the pretrial hearing and in further proceedings, any party may be represented by counsel. The court shall appoint counsel for a party who is financially unable to obtain counsel.

(2) If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

History: En. 61-320 by Sec. 20, Ch. 512, L. 1975; R.C.M. 1947, 61-320.

40-6-120. Hearings and records — confidentiality. Notwithstanding any other law concerning public hearings and records, any hearing or trial held under this part shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file in any agency of the state or of any political subdivision or elsewhere, are subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-321 by Sec. 21, Ch. 512, L. 1975; R.C.M. 1947, 61-321.

40-6-121. Action to declare mother and child relationship. Any interested party may bring an action to determine the existence or nonexistence of a mother and child relationship. Insofar as practicable, the provisions of this part applicable to the father and child relationship apply.

History: En. 61-322 by Sec. 22, Ch. 512, L. 1975; R.C.M. 1947, 61-322.

40-6-122. Promise to render support. (1) Any promise in writing to furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 40-6-107(4).

(2) In the best interest of the child or the mother, the court may, and upon the promisor's request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise.

History: En. 61-323 by Sec. 23, Ch. 512, L. 1975; amd. Sec. 22, Ch. 33, L. 1977; R.C.M. 1947, 61-323.

40-6-123. Birth records. (1) Upon order of a court of this state or upon request of a court of another state, the department of health and environmental sciences shall prepare a substitute certificate of birth consistent with the findings of the court and shall substitute the new certificate for the original certificate of birth.

(2) The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the new certificate but the actual place and date of birth shall be shown.

(3) The evidence upon which the new certificate was made and the original birth certificate shall be kept in a sealed and confidential file and shall be subject to inspection only upon consent of the court and all interested persons or in exceptional cases only upon an order of the court for good cause shown.

History: En. 61-324 by Sec. 24, Ch. 512, L. 1975; R.C.M. 1947, 61-324.

40-6-124. Repealed. Sec. 15, Ch. 530, L. 1981.

History: En. 61-328 by Sec. 1, Ch. 422, L. 1977; R.C.M. 1947, 61-328.

40-6-125. Children born out of wedlock — relinquishment — consent. (1) If the mother of a child born out of wedlock proposes to relinquish the child for adoption and the relinquishment or consent of the birth father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this part, by the court pursuant to Title 41, chapter 3, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may deliver physical custody of her child to the department or a licensed child placing agency by filing a petition pursuant to 40-6-132. Upon petition, the court may enter an order authorizing temporary care of the child.

History: En. 61-329 by Sec. 2, Ch. 422, L. 1977; R.C.M. 1947, 61-329; amd. Sec. 4, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "relinquish" for "release" throughout the section; substituted "birth" for "natural" after "consent of the" near the middle of (1); substituted the provision dealing with delivering physical custody for the provision dealing with executing a release terminating rights in (2); deleted former subsection (3); for text of former section see sec.2, Ch. 422, L. 1977.

40-6-126. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 40-6-105 shall be presumed to be the father of the child for purposes of this part unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 40-6-107 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 41, chapter 3.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 40-6-105 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

History: En. 61-330 by Sec. 3, Ch. 422, L. 1977; R.C.M. 1947, 61-330.

40-6-127. Expected child — intent to release or consent — petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana Rules of Civil Procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 40-6-126 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 40-6-126(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 40-6-126(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

History: En. 61-331 by Sec. 4, Ch. 422, L. 1977; R.C.M. 1947, 61-331.

40-6-128. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as practical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 40-6-129 and 40-6-130. This section is not applicable if the father is a person whose consent to adoption is not required under 40-8-111.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following:

(a) whether the mother was married at the time of conception of the child or at any time thereafter;

(b) whether the mother was cohabiting with a man at the time of conception or birth of the child;

(c) whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or

(d) whether any man has formally or informally acknowledged or declared his possible paternity of the child.

(4) Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this part may be compelled to testify concerning or to divulge the identity of the father or possible father of that child.

(5) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana Rules of Civil Procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 40-6-126 or 40-6-127;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 40-6-127(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(6) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(7) Proof of service of the notice of hearing required by subsection (5) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and if so shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(8) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(9) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 40-6-127 or a notice required pursuant to subsection (5) of this section and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

History: En. 61-332 by Sec. 5, Ch. 422, L. 1977; R.C.M. 1947, 61-332.

40-6-129. Grounds for termination of father's rights. (1) If the court has proof that the person whom it determines pursuant to 40-6-128 to be the father of the child was timely served with notice of intent to release pursuant to 40-6-127 or was served with or waived the notice of hearing required by 40-6-128(5), the court may permanently terminate the rights of the putative father if the putative father:

(a) submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) was served with a notice of intent to release in accordance with 40-6-127(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) is given proper notice of hearing in accordance with subsection (5) or (7) of 40-6-128 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 40-6-128.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

History: **En. 61-333 by Sec. 6, Ch. 422, L. 1977; R.C.M. 1947, 61-333.**

40-6-130. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to whom the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this part or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

History: **En. 61-334 by Sec. 7, Ch. 422, L. 1977; R.C.M. 1947, 61-334.**

40-6-131. Uniformity of application and construction. This part shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

History: **En. 61-327 by Sec. 29, Ch. 512, L. 1975; R.C.M. 1947, 61-327.**

40-6-132. Petition for relinquishment of custody of child. (1) Any parent who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by petitioning the district court upon forms supplied by the court.

(2) The petition shall contain the following information:

(a) the name and age of both birth parents, if known;

(b) the name, if any, and the age of the child;

(c) the race and religion of both birth parents, if known; and

(d) why relinquishment is desired.

(3) Upon receipt of the petition, the court shall set the time for hearing the matter.

(4) The parent-child legal relationship may not be terminated by relinquishment proceedings unless both birth parents join in the petition unless the parent-child legal relationship of a parent not joining the petition has terminated.

History: En. Sec. 1, Ch. 530, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (1) of sec. 16, Ch. 530, L. 1981, provided: "Sections 1 through 3 [40-6-132 through 40-6-134] are intended to be codified as an integral part of Title 40, chapter 6, part 1, and the provisions of Title 40, chapter 6, part 1, apply to sections 1 through 3."

Cross-Reference

Parent-child legal relationship termination, Title 41, ch. 3, part 6.

40-6-133. Relinquishment hearing — requirements. (1) The court may not issue an order of relinquishment until it is satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act.

(2) If the court finds after the hearing that it is in the best interests of the birth parents or child that no relinquishment be granted, the court shall enter an order dismissing the action.

(3) If the court is not satisfied that the relinquishing parent has been counseled and fully understands the consequences of his act, it may continue the matter. The court may, after considering the best interests of the child, order the child to be placed in foster care while the matter is continued.

(4) If the court finds at the hearing that the relinquishing parent has been counseled as provided in subsection (1) and that the relinquishment would best serve the interests of the birth parents and the child, it shall enter an order of relinquishment. The order shall contain language terminating the parent-child legal relationship.

History: En. Sec. 2, Ch. 530, L. 1981.

40-6-134. Order of relinquishment — custody. (1) In the order of relinquishment terminating the parent-child legal relationship of both parents or of the only living parent, the court, after taking into account the racial, cultural, and religious background of the child, shall order legal custody transferred to:

(a) the department of social and rehabilitation services;

(b) a licensed child placement agency;

(c) a relative of the child;

(d) the person named in the notice filed by the parents pursuant to 40-8-109; or

(e) any other person eligible to adopt if the court finds it is in the child's best interest.

(2) The order of relinquishment shall set forth all pertinent facts brought forth at the hearing and shall also state that the court is satisfied that the provisions of 40-6-133(1) have been satisfied.

(3) The order of relinquishment divests the relinquishing parent or parents of all legal rights and obligations they may have with respect to the child relinquished. The order shall release the relinquished child from all legal obligations with respect to the relinquishing parent or parents.

History: **En. Sec. 3, Ch. 530, L. 1981.**

Part 2

Obligations of Parents

40-6-201. Legitimacy of children born in wedlock. All children born in wedlock are presumed to be legitimate.

History: **En. Sec. 280, Civ. C. 1895; re-en. Sec. 3738, Rev. C. 1907; re-en. Sec. 5830, R.C.M. 1921; Cal. Civ. C. Sec. 193; Field Civ. C. Sec. 86; re-en. Sec. 5830, R.C.M. 1935; R.C.M. 1947, 61-101.**

40-6-202. Legitimacy of children born after dissolution of marriage. All children of a woman who has been married, born within 10 months after the dissolution of her marriage, are presumed to be legitimate children of that marriage.

History: **En. Sec. 281, Civ. C. 1895; re-en. Sec. 3739, Rev. C. 1907; re-en. Sec. 5831, R.C.M. 1921; Cal. Civ. C. Sec. 194; Based on Field Civ. C. Sec. 87; re-en. Sec. 5831, R.C.M. 1935; R.C.M. 1947, 61-102.**

40-6-203. Child legitimatized by marriage of parents. A child born before wedlock becomes legitimate by the subsequent marriage of its parents.

History: **En. Sec. 11, p. 410, Bannack Stat.; re-en. Sec. 11, p. 521, Cod. Stat. 1871; re-en. Sec. 864, 5th Div. Rev. Stat. 1879; re-en. Sec. 1425, 5th Div. Comp. Stat. 1887; amd. Sec. 302, Civ. C. 1895; re-en. Sec. 3760, Rev. C. 1907; re-en. Sec. 5852, R.C.M. 1921; Cal. Civ. C. Sec. 215; re-en. Sec. 5852, R.C.M. 1935; R.C.M. 1947, 61-123.**

40-6-204 through 40-6-210 reserved.

40-6-211. Obligations of parents for the support and education of their children. The parent or parents entitled to the custody of a child must give him support and education suitable to his circumstances.

History: **En. Sec. 283, Civ. C. 1895; re-en. Sec. 3741, Rev. C. 1907; re-en. Sec. 5833, R.C.M. 1921; Cal. Civ. C. Sec. 196; Field Civ. C. Sec. 89; re-en. Sec. 5833, R.C.M. 1935; amd. Sec. 21, Ch. 293, L. 1975; R.C.M. 1947, 61-104.**

40-6-212. Allowance to parent. The proper court may direct an allowance to be made to the parent of a child out of the child's property for the past or future support and education of the child, on such conditions as may be proper, whenever such direction is for the child's benefit.

History: **En. Sec. 288, Civ. C. 1895; re-en. Sec. 3746, Rev. C. 1907; re-en. Sec. 5838, R.C.M. 1921; Cal. Civ. C. Sec. 201; Field Civ. C. Sec. 92; re-en. Sec. 5838, R.C.M. 1935; amd. Sec. 14, Ch. 33, L. 1977; R.C.M. 1947, 61-109.**

40-6-213. Remedy when parent dies without providing for support of child. If a parent chargeable with the support of a child dies leaving the child chargeable to the county and leaving an estate sufficient for the child's support, the county commissioners of the county may claim provision for the child's support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent.

History: En. Sec. 292, Civ. C. 1895; re-en. Sec. 3750, Rev. C. 1907; re-en. Sec. 5842, R.C.M. 1921; Cal. Civ. C. Sec. 205; Based on Field Civ. C. Sec. 96; re-en. Sec. 5842, R.C.M. 1935; amd. Sec. 15, Ch. 33, L. 1977; R.C.M. 1947, 61-113.

40-6-214. Reciprocal duties of parents and children in maintaining each other. It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

History: En. Sec. 293, Civ. C. 1895; re-en. Sec. 3751, Rev. C. 1907; re-en. Sec. 5843, R.C.M. 1921; Cal. Civ. C. Sec. 206; Field Civ. C. Sec. 97; re-en. Sec. 5843, R.C.M. 1935; R.C.M. 1947, 61-114.

40-6-215. When parent liable for necessaries supplied to child. If a parent neglects to provide articles necessary for his child under his charge, according to his circumstances, a third person may in good faith supply such necessaries and recover the reasonable value thereof from the parent.

History: En. Sec. 294, Civ. C. 1895; re-en. Sec. 3752, Rev. C. 1907; re-en. Sec. 5844, R.C.M. 1921; Cal. Civ. C. Sec. 207; Field Civ. C. Sec. 98; re-en. Sec. 5844, R.C.M. 1935; R.C.M. 1947, 61-115.

40-6-216. When parent not liable for support furnished child. A parent is not bound to compensate the other parent or a relative for the voluntary support of his child, without an agreement for compensation, or to compensate a stranger for the support of a child who has abandoned the parent without just cause.

History: En. Sec. 295, Civ. C. 1895; re-en. Sec. 3753, Rev. C. 1907; re-en. Sec. 5845, R.C.M. 1921; Cal. Civ. C. Sec. 208; Field Civ. C. Sec. 99; re-en. Sec. 5845, R.C.M. 1935; R.C.M. 1947, 61-116.

40-6-217. Married person not bound for support of spouse's children by former marriage. A married person is not bound to support his spouse's children by a former marriage; but if he receives them into his family and supports them, it is presumed that he does so as a parent and, where such is the case, they are not liable to him for their support nor he to them for their services.

History: En. Sec. 296, Civ. C. 1895; re-en. Sec. 3754, Rev. C. 1907; re-en. Sec. 5846, R.C.M. 1921; Cal. Civ. C. Sec. 209; Field Civ. C. Sec. 100; re-en. Sec. 5846, R.C.M. 1935; amd. Sec. 22, Ch. 293, L. 1975; R.C.M. 1947, 61-117.

40-6-218. Compensation and support of person after attaining majority. Where a person, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

History: En. Sec. 297, Civ. C. 1895; re-en. Sec. 3755, Rev. C. 1907; re-en. Sec. 5847, R.C.M. 1921; Cal. Civ. C. Sec. 210; Field Civ. C. Sec. 101; re-en. Sec. 5847, R.C.M. 1935; amd. Sec. 16, Ch. 33, L. 1977; R.C.M. 1947, 61-118.

40-6-219 and 40-6-220 reserved.

40-6-221. Custody, services, and earnings of child. The father and mother of an unmarried minor child are equally entitled to the custody, services, and earnings of the child. If either parent be dead or unable or refuses to take the custody or has abandoned his or her family, the other is entitled to the custody, services, and earnings of the child, unless custody is determined otherwise pursuant to 40-4-221.

History: En. Sec. 284, Civ. C. 1895; re-en. Sec. 3742, Rev. C. 1907; amd. Sec. 1, Ch. 61, L. 1915; re-en. Sec. 5834, R.C.M. 1921; Cal. Civ. C. Sec. 197; Based on Field Civ. C. Sec. 90; re-en. Sec. 5834, R.C.M. 1935; amd. Sec. 26, Ch. 512, L. 1975; amd. Sec. 13, Ch. 33, L. 1977; R.C.M. 1947, 61-105; amd. Sec. 5, Ch. 127, L. 1979.

40-6-222. Custody of children where husband and wife living separate. The husband and father, as such, has no rights superior to those of the wife and mother in regard to the care, custody, education, and control of the children of the marriage while such husband and wife live separate and apart from each other.

History: En. Sec. 285, Civ. C. 1895; re-en. Sec. 3743, Rev. C. 1907; re-en. Sec. 5835, R.C.M. 1921; Cal. Civ. C. Sec. 198; re-en. Sec. 5835, R.C.M. 1935; R.C.M. 1947, 61-106.

40-6-223. When parent may bring action for the exclusive control of children — decree. Without application for divorce, the husband or wife may bring an action for the exclusive control of the children of the marriage, and the court or judge may, during the pendency of such action or at the final hearing thereof or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage as may be just and in accordance with the natural rights of the parents and the best interests of the children and may at any time thereafter amend, vary, or modify such order or decree as the natural rights and the interests of the parties, including the children, may require.

History: En. Sec. 286, Civ. C. 1895; re-en. Sec. 3744, Rev. C. 1907; re-en. Sec. 5836, R.C.M. 1921; Cal. Civ. C. Sec. 199; re-en. Sec. 5836, R.C.M. 1935; R.C.M. 1947, 61-107.

40-6-224. When custody may be awarded without dissolution proceedings. When a husband and wife live in a state of separation without the marriage being dissolved, any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require.

History: En. Sec. 301, Civ. C. 1895; re-en. Sec. 3759, Rev. C. 1907; re-en. Sec. 5851, R.C.M. 1921; Cal. Civ. C. Sec. 214; Field Civ. C. Sec. 106; re-en. Sec. 5851, R.C.M. 1935; amd. Sec. 17, Ch. 33, L. 1977; R.C.M. 1947, 61-122.

40-6-225 through 40-6-230 reserved.

40-6-231. Right of parent to determine the residence of child. A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

History: En. Sec. 300, Civ. C. 1895; re-en. Sec. 3758, Rev. C. 1907; re-en. Sec. 5850, R.C.M. 1921; Cal. Civ. C. Sec. 213; Field Civ. C. Sec. 104; re-en. Sec. 5850, R.C.M. 1935; R.C.M. 1947, 61-121.

40-6-232. Parental control over property of child. The parent, as such, has no control over the property of the child.

History: En. Sec. 289, Civ. C. 1895; re-en. Sec. 3747, Rev. C. 1907; re-en. Sec. 5839, R.C.M. 1921; Cal. Civ. C. Sec. 202; Field Civ. C. Sec. 93; re-en. Sec. 5839, R.C.M. 1935; R.C.M. 1947, 61-110.

40-6-233. Remedy for parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child or by its relative within the third degree or by the county commissioners of the county where the child resides. When the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced.

History: En. Sec. 290, Civ. C. 1895; re-en. Sec. 3748, Rev. C. 1907; re-en. Sec. 5840, R.C.M. 1921; Cal. Civ. C. Sec. 203; Based on Field Civ. C. Sec. 94; re-en. Sec. 5840, R.C.M. 1935; R.C.M. 1947, 61-111.

40-6-234. When parental authority ceases. The authority of the parent ceases:

(1) upon the appointment, by a court, of a guardian of the person of a child;

(2) upon the marriage of a child; or

(3) upon its attaining majority.

History: En. Sec. 291, Civ. C. 1895; re-en. Sec. 3749, Rev. C. 1907; re-en. Sec. 5841, R.C.M. 1921; Cal. Civ. C. Sec. 204; Field Civ. C. Sec. 95; re-en. Sec. 5841, R.C.M. 1935; R.C.M. 1947, 61-112.

40-6-235. Parent may relinquish services and custody of child. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

History: En. Sec. 298, Civ. C. 1895; re-en. Sec. 3756, Rev. C. 1907; re-en. Sec. 5848, R.C.M. 1921; Cal. Civ. C. Sec. 211; Field Civ. C. Sec. 102; re-en. Sec. 5848, R.C.M. 1935; R.C.M. 1947, 61-119.

40-6-236. Wages of minors. The wages of a minor employed in service may be paid him until the parent or guardian entitled thereto gives the employer notice that he claims such wages.

History: En. Sec. 299, Civ. C. 1895; re-en. Sec. 3757, Rev. C. 1907; re-en. Sec. 5849, R.C.M. 1921; Cal. Civ. C. Sec. 212; Based on Field Civ. C. Sec. 103; re-en. Sec. 5849, R.C.M. 1935; R.C.M. 1947, 61-120.

40-6-237. Destruction of property by minor — liability of parents. Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed $2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

Compiler's Comments

1981 Amendment: Increased the maximum amount that can be recovered under this section from $1,500 to $2,500.

40-6-238. Limitation on amount of recovery. The recovery shall be limited to the actual damages in an amount not to exceed $2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Compiler's Comments

1981 Amendment: Increased the maximum amount that can be recovered under this section from $1,500 to $2,500.

Part 3

Obligations of Children

40-6-301. Duty of child to support indigent parents. It is hereby declared and made the duty of every adult child, having the ability so to do, to furnish and provide necessary food, clothing, shelter, and medical attendance for his indigent parent or parents, unless, in the judgment of the court or jury, he is excused therefrom by reason of intemperance, indolence, immorality, or profligacy of such parent.

History: En. Sec. 1, Ch. 42, L. 1915; re-en. Sec. 5853, R.C.M. 1921; re-en. Sec. 5853, R.C.M. 1935; R.C.M. 1947, 61-124.

40-6-302. Failure to support — misdemeanor. Any person violating the provisions of 40-6-301 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 42, L. 1915; re-en. Sec. 5854, R.C.M. 1921; re-en. Sec. 5854, R.C.M. 1935; R.C.M. 1947, 61-125.

40-6-303. Civil action to enforce duty to support. A civil suit may be instituted and maintained for the enforcement of the provisions of 40-6-301 by any such child, where there is more than one adult child, or by the parent to whom such support is due or by the county attorney, and in case there is more than one such child, the court or the jury upon the hearing is authorized and empowered to apportion the expenses of such support between the adult children, and the court shall enter judgment in accordance with such finding and apportionment; provided, that such civil action shall not be construed as barring the arrest and conviction of such person for misdemeanor.

History: En. Sec. 3, Ch. 42, L. 1915; re-en. Sec. 5855, R.C.M. 1921; re-en. Sec. 5855, R.C.M. 1935; R.C.M. 1947, 61-126.

CHAPTER 7

UNIFORM CHILD CUSTODY JURISDICTION ACT

Part 1 — Uniform Child Custody Jurisdiction Act

Section
40-7-101. Short title.
40-7-102. Purpose — construction.

40-7-103. Definitions.
40-7-104. Jurisdiction.
40-7-105. Notice and opportunity to be heard.
40-7-106. Notice to persons outside this state — submission to jurisdiction.
40-7-107. Simultaneous proceedings in other states.
40-7-108. Inconvenient forum.
40-7-109. Jurisdiction declined by reason of conduct.
40-7-110. Information under oath to be submitted to the court.
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40-7-114. Recognition of out-of-state custody decrees.
40-7-115. Modification of custody decree of another state.
40-7-116. Filing and enforcement of custody decree of another state.
40-7-117. Registry of out-of-state custody decrees and proceedings.
40-7-118. Certified copies of custody decree.
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40-7-122. Preservation of documents for use in other states.
40-7-123. Request for court records of another state.
40-7-124. International application.
40-7-125. Priority.

Part 1

Uniform Child Custody Jurisdiction Act

40-7-101. Short title. This chapter may be cited as the "Uniform Child Custody Jurisdiction Act".

History: En. 61-401 by Sec. 1, Ch. 537, L. 1977; R.C.M. 1947, 61-401.

40-7-102. Purpose — construction. (1) The general purposes of this chapter are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jursidiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This chapter shall be construed to promote the general purposes stated in this section.

History: **En. 61-402 by Sec. 2, Ch. 537, L. 1977; R.C.M. 1947, 61-402.**

40-7-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

History: **En. 61-403 by Sec. 3, Ch. 537, L. 1977; R.C.M. 1947, 61-403.**

40-7-104. Jurisdiction. The jurisdictional provisions of 40-4-211 apply to this chapter.

History: **En. 61-404 by Sec. 4, Ch. 537, L. 1977; R.C.M. 1947, 61-404.**

40-7-105. Notice and opportunity to be heard. Before making a decree under this chapter, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.

History: En. 61-405 by Sec. 5, Ch. 537, L. 1977; R.C.M. 1947, 61-405.

40-7-106. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court, including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

History: En. 61-406 by Sec. 6, Ch. 537, L. 1977; R.C.M. 1947, 61-406.

40-7-107. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this chapter if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this chapter unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end

that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

History: En. 61-407 by Sec. 7, Ch. 537, L. 1977; R.C.M. 1947, 61-407.

40-7-108. Inconvenient forum. (1) A court which has jurisdiction under this chapter to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this chapter if a custody determination is incidental to an action for divorce or another proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other

expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

History: En. 61-408 by Sec. 8, Ch. 537, L. 1977; R.C.M. 1947, 61-408.

40-7-109. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

History: En. 61-409 by Sec. 9, Ch. 537, L. 1977; R.C.M. 1947, 61-409.

40-7-110. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the

court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

History: **En. 61-410 by Sec. 10, Ch. 537, L. 1977; R.C.M. 1947, 61-410.**

40-7-111. Additional parties. If the court learns from information furnished by the parties pursuant to 40-7-110 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 40-7-106.

History: **En. 61-411 by Sec. 11, Ch. 537, L. 1977; R.C.M. 1947, 61-411.**

40-7-112. Appearance of parties and child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 40-7-106 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

History: **En. 61-412 by Sec. 12, Ch. 537, L. 1977; R.C.M. 1947, 61-412.**

40-7-113. Legal effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 40-7-104 binds all parties who have been served in this state or notified in accordance with 40-7-106 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this chapter.

History: **En. 61-413 by Sec. 13, Ch. 537, L. 1977; R.C.M. 1947, 61-413.**

40-7-114. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this chapter or which was made under factual circumstances meeting the jurisdictional standards of the chapter, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this chapter.

History: **En. 61-414 by Sec. 14, Ch. 537, L. 1977; R.C.M. 1947, 61-414.**

40-7-115. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this chapter or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 40-7-109 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 40-7-123.

History: En. 61-415 by Sec. 15, Ch. 537, L. 1977; R.C.M. 1947, 61-415.

40-7-116. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

History: En. 61-416 by Sec. 16, Ch. 537, L. 1977; R.C.M. 1947, 61-416.

40-7-117. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

History: En. 61-417 by Sec. 17, Ch. 537, L. 1977; R.C.M. 1947, 61-417.

40-7-118. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

History: En. 61-418 by Sec. 18, Ch. 537, L. 1977; R.C.M. 1947, 61-418.

40-7-119. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

History: **En. 61-419 by Sec. 19, Ch. 537, L. 1977; R.C.M. 1947, 61-419.**

40-7-120. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

History: **En. 61-420 by Sec. 20, Ch. 537, L. 1977; R.C.M. 1947, 61-420.**

40-7-121. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

History: **En. 61-421 by Sec. 21, Ch. 537, L. 1977; R.C.M. 1947, 61-421.**

40-7-122. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

History: **En. 61-422 by Sec. 22, Ch. 537, L. 1977; R.C.M. 1947, 61-422.**

40-7-123. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 40-7-122.

History: **En. 61-423 by Sec. 23, Ch. 537, L. 1977; R.C.M. 1947, 61-423.**

40-7-124. International application. The general policies of this chapter extend to the international area. The provisions of this chapter relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

History: **En. 61-424 by Sec. 24, Ch. 537, L. 1977; R.C.M. 1947, 61-424.**

40-7-125. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this chapter shall be given calendar priority and handled expeditiously.

History: **En. 61-425 by Sec. 25, Ch. 537, L. 1977; R.C.M. 1947, 61-425.**

CHAPTER 8

ADOPTION

Part 1 — Adoption of Children

Section
40-8-101. Short title.
40-8-102. Uniformity of interpretation.
40-8-103. Definitions.
40-8-104. Who may be adopted.
40-8-105. Minor parent.
40-8-106. Who may adopt.
40-8-107. Venue.
40-8-108. Who may place a child for adoption.
40-8-109. Placement for adoption by parents.
Section 40-8-110 reserved.
40-8-111. Consent required for adoption.
40-8-112. Withdrawal of consent.
40-8-113. Consent of child.
Sections 40-8-114 through 40-8-120 reserved.
40-8-121. Petition for adoption.
40-8-122. Investigation.
40-8-123. Summary decree.
40-8-124. Interlocutory and final decree.
40-8-125. Effect of final decree.
40-8-126. Confidentiality of record and proceedings.
40-8-127. Appeal.
40-8-128. Foreign adoption decrees.

Part 2 — Adoption of Adults

40-8-201. Adoption of adult.
40-8-202. Procedure.

Part 1

Adoption of Children

40-8-101. Short title. This part may be cited as the "Uniform Adoption Act", as amended.

History: En. Sec. 17, Ch. 240, L. 1957; R.C.M. 1947, 61-217; amd. Sec. 5, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Added "as amended" to the end of the section.

40-8-102. Uniformity of interpretation. This part shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 16, Ch. 240, L. 1957; R.C.M. 1947, 61-216.

40-8-103. Definitions. As used in this chapter, unless the context otherwise requires the following definitions apply:

(1) "Adoption" means the act of creating the legal relationship between parent and child when it does not exist genetically.

(2) "Adoptive parent" means an adult who has become the mother or father of a child through the legal process of adoption.

(3) "Agency" means a public or voluntary agency licensed by any jurisdiction within the United States and expressly empowered to place children as a preliminary to a possible adoption.

(4) "Birth parent" means the mother or father of genetic origin of a child but does not include a putative father of a child.

(5) "Child" means any person under 18 years of age.

(6) "Court" means a Montana district court or a tribal court of any Montana Indian reservation.

(7) "Department" means the department of social and rehabilitation services, as established and provided for in Title 2, chapter 15, part 22.

(8) "Extended family member" means an adult who is the child's grandparent, aunt or uncle, brother or sister, niece or nephew, or first cousin.

(9) "Parent" means the birth or adoptive mother or the birth, adoptive, or legal father whose parental rights have not been terminated.

(10) "Placement for adoption" means the transfer of physical custody of a child with respect to whom all parental rights have been terminated and who is otherwise legally free for adoption to a person who intends to adopt the child.

(11) "Relinquishment" means the informed and voluntary release in writing of all parental rights with respect to a child by a parent to an individual or agency pursuant to 40-6-132 through 40-6-134.

History: En. Sec. 1, Ch. 240, L. 1957; R.C.M. 1947, 61-201; amd. Sec. 6, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "chapter" for "part" in the first sentence of the section; deleted former subsection (1) defining "adoptee"; inserted subsections (1) and (2); deleted former subsection (4) defining "adult adoptee"; inserted subsections (3) and (4); rewrote the definition of "child" substantially in (5) (for former text see sec. 1, Ch. 240, L. 1957); added subsections (6) through (11).

40-8-104. Who may be adopted. (1) Any minor may be adopted if:

(a) the minor has no living parent; or

(b) the parental rights of the living parents of the minor have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents consent to the adoption.

(2) An adult may be adopted as provided in part 2 of this chapter.

History: En. Sec. 2, Ch. 240, L. 1957; R.C.M. 1947, 61-202; amd. Sec. 7, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "minor" for "child present within this state at the time the petition for adoption is filed, irrespective of place of birth or place of residence," in the first sentence of the section; added subsections (1)(a), (1)(b), (1)(c), and (2).

40-8-105. Minor parent. A parent who is a minor shall have the right to relinquish his or her child for adoption, and such relinquishment shall not be subject to revocation by reason of such minority.

History: En. 61-218 by Sec. 6, Ch. 199, L. 1961; R.C.M. 1947, 61-218.

40-8-106. Who may adopt. The following persons are eligible to adopt a child:

(1) a husband and wife jointly or either the husband or wife if the other spouse is a parent of the child;

(2) an unmarried person who is at least 18 years old;

(3) a married person at least 18 years old who is legally separated from the other spouse;

(4) in the case of an illegitimate child, its unmarried father or mother.

History: En. Sec. 3, Ch. 240, L. 1957; amd. Sec. 15, Ch. 240, L. 1971; amd. Sec. 22, Ch. 94, L. 1973; R.C.M. 1947, 61-203.

40-8-107. Venue. Proceedings for adoption must be brought in the district court of the county where the petitioners reside.

History: En. Sec. 4, Ch. 240, L. 1957; R.C.M. 1947, 61-204.

40-8-108. Who may place a child for adoption. A child may be placed for adoption only by:

(1) the department;

(2) a licensed child placing agency; or

(3) the child's parents.

History: En. Sec. 10, Ch. 530, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (2) of sec. 16, Ch. 530, L. 1981, provided: "Sections 10 and 11 [40-8-108 and 40-8-109] are intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to sections 10 and 11."

40-8-109. Placement for adoption by parents. (1) No parent may make a placement of a child for adoption with a person who is not a stepparent or a member of the child's extended family unless the parent files a notice of parental placement with the district court for the county in which the prospective adoptive parent or the parent making the placement resides.

(2) The notice of parental placement shall be filed prior to a parent's placement of the child with a person who intends to adopt the child. The notice of parental placement shall contain the following information:

(a) the name and address of each birth parent, if known, and if unknown, the steps taken to ascertain the whereabouts of the parent or parents;

(b) the name and address of each prospective adoptive parent;

(c) the name and address or expected date and place of birth of the child; and

(d) the name and address of counsel, guardian ad litem, or other representative, if any, for each of the parties in (a) through (c) of subsection (2).

(3) Upon receipt of a notice of parental placement, the court shall require that the department examine the child and conduct interviews with the birth parents and prospective adoptive parents and report to the court within 30 days but not earlier than 5 days after the birth of the child. The report must state whether the following requirements for placement have been met:

(a) that the decision to place was voluntarily made by the birth parents;

(b) that the department has no temporary authority to investigate or provide protective services to the family under 41-3-402;

(c) that the birth parents, the prospective adoptive parents, and their representatives have agreed in writing to provide the court with sworn affidavits containing itemized statements of all fees charged or to be charged, expenses incurred or to be incurred, and payments received or to be received in connection with the proposed adoptive placement;

(d) that the prospective adoptive parents have been provided a medical and social history of the child and birth parents; and

(e) that the proposed placement is in the child's best interest.

(4) Within 45 days of filing of the notice of parental placement, the court shall schedule a hearing to consider the proposed placement.

(5) (a) At least 5 days' notice of the time and place of the hearing must be given to the birth parents, the prospective adoptive parents, any named guardian ad litem, and the agency or person who conducted the investigation under subsection (3).

(b) The hearing shall be closed to all persons except those persons entitled to notice and their representatives or counsel.

(6) If the court finds that all requirements for placement have been met, the court may issue an order or schedule a hearing for the purpose of terminating parental rights and granting temporary custody to the prospective adoptive parents. The prospective adoptive parents must file their petition to adopt within 30 days of the order.

(7) If the court finds that all requirements for the adoptive placement have not been met, the court may issue any order appropriate to protect the child.

History: En. Sec. 11, Ch. 530, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (2) of sec. 16, Ch. 530, L. 1981, provided: "Sections 10 and 11 [40-8-108 and 40-8-109] are intended to be codified as an integral part of Title 40, chapter 8, part 1, and the provisions of Title 40, chapter 8, part 1, apply to sections 10 and 11."

40-8-110 reserved.

40-8-111. Consent required for adoption. (1) An adoption of a child may be decreed when there have been filed written consents to adoption executed by:

(a) both parents, if living, or the surviving parent of a child, provided that consent is not required from a father or mother:

(i) adjudged guilty by a court of competent jurisdiction of assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children, toward the child, as provided in 45-5-625;

(ii) who has been judicially deprived of the custody of the child on account of cruelty or neglect toward the child;

(iii) who has, in the state of Montana or in any other state of the United States, willfully abandoned the child, as defined in 41-3-102(3)(d);

(iv) who has caused the child to be maintained by any public or private children's institution, charitable agency, or any licensed adoption agency or the department of social and rehabilitation services of the state of Montana for a period of 1 year without contributing to the support of the child during said period, if able;

(v) if it is proven to the satisfaction of the court that the father or mother, if able, has not contributed to the support of the child during a period of 1 year before the filing of a petition for adoption; or

(vi) whose parental rights have been judicially terminated;

(b) the legal guardian of the child if both parents are dead or if the rights of the parents have been terminated by judicial proceedings and such guardian has authority by order of the court appointing him to consent to the adoption;

(c) the executive head of an agency if the child has been relinquished for adoption to such agency or if the rights of the parents have been judicially terminated or if both parents are dead and custody of the child has been legally vested in such agency with authority to consent to adoption of the child; or

(d) any person having legal custody of a child by court order if the parental rights of the parents have been judicially terminated, but in such case the court having jurisdiction of the custody of the child must consent to adoption and a certified copy of its order shall be attached to the petition.

(2) The consents required by subsections (1)(a) and (1)(b) shall be acknowledged before an officer authorized to take acknowledgments or witnessed by a representative of the department of social and rehabilitation services or of an agency or witnessed by a representative of the court.

History: En. Sec. 5, Ch. 240, L. 1957; amd. Sec. 2, Ch. 199, L. 1961; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 27, Ch. 512, L. 1975; R.C.M. 1947, 61-205; amd. Sec. 6, Ch. 33, L. 1979; amd. Sec. 8, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "assault on the child, as provided in 45-5-201; endangering the welfare of children, concerning the child, as provided in 45-5-622; or sexual abuse of children" for "physical cruelty" in (1)(a)(i); added "as provided in 45-5-625" to (1)(a)(i); added "as defined in 41-3-102(3)(d)" to (1)(a)(iii).

40-8-112. Withdrawal of consent. Withdrawal of any consent filed in connection with a petition for adoption hereunder shall not be permitted, except that the court, after notice and opportunity to be heard is given to the petitioner, to the person seeking to withdraw consent, and to any agency participating in the adoption proceedings, may, if it finds that the best interests of the child will be furthered thereby, issue a written order permitting the withdrawal of such consent. The entry of the interlocutory or final decree of adoption renders any consent irrevocable.

History: En. Sec. 6, Ch. 240, L. 1957; R.C.M. 1947, 61-206.

40-8-113. Consent of child. If a child is 12 years of age or over, he must consent to his adoption. Consent must be given in court or be in writing in such form as the court shall direct.

History: **En. Sec. 7, Ch. 240, L. 1957; R.C.M. 1947, 61-207; amd. Sec. 9, Ch. 530, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "If a child is" for "Consent of the child if" at the beginning of the section; substituted "he must consent to his adoption" for "shall be required" at the end of the first sentence of the section; substituted "Consent must" for "such consent shall" at the beginning of the last sentence of the section.

40-8-114 through 40-8-120 reserved.

40-8-121. Petition for adoption. (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) the full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) when the petitioners acquired or intend to acquire custody of the child and from what person or agency;

(c) the date and place of birth of child, if known;

(d) the name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) that it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) a full description and statement of value of all property owned or possessed by the child;

(g) facts, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. An additional copy shall be sent to any agency participating in the adoption proceeding.

(3) Any written consent required by this part may be attached to the petition or may be filed after the filing of the petition, with the consent of the court.

(4) Except as provided in 40-8-109, a petition for adoption must be filed within 1 year of the time the child was placed for adoption with the petitioner.

History: **En. Sec. 8, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 18, Ch. 33, L. 1977; R.C.M. 1947, 61-208; amd. Sec. 12, Ch. 530, L. 1981.**

Compiler's Comments

1981 Amendment: Added subsection (4).

40-8-122. Investigation. (1) Upon the filing of a petition for adoption, the court shall order an investigation to be made by the department or by a licensed child placing agency or other person named by the court. The investigation may be waived if the petitioner is a stepparent of the child or if one of the petitioners is a member of the child's extended family. The report of investigation shall be filed with the court by the investigator within 30 days from the issuance of the order for investigation, unless time therefor is extended by the court. The report of the investigation shall state:

(a) whether the child is legally free for adoption;

(b) whether the proposed home is a suitable one for the child;

(c) that medical and social histories have been provided to the adoptive parent; and

(d) any other circumstances and conditions which may have a bearing on the adoption and of which the court should have knowledge.

(2) The court may order agencies named in subsection (1) located in one or more counties to make separate investigations on separate parts of the inquiry as may be appropriate.

(3) The report of the investigation shall become a part of the files in the case and shall contain a definite recommendation stating the reasons for or against the proposed adoption.

History: En. Sec. 9, Ch. 240, L. 1957; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 2, Ch. 495, L. 1975; R.C.M. 1947, 61-209; amd. Sec. 13, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substantially rewrote subsection (1), (1)(a), and (1)(b) to reflect the need for a licensed child placing agency and waiver regarding stepparent adoption and numerous changes in grammar (see Sec. 2, Ch. 495, L. 1975; for former text); made a change in grammar in (3). Substituted parties who are to conduct the investigation and parties who may waive the investigation; deleted a provision giving the court discretion to fix a time less than 30 days for filing the report; inserted subsection (1)(c); and generally rewrote the section (for former text see Sec. 2, Ch. 495, L. 1975).

40-8-123. Summary decree. If the child is a member of the extended family of one of the petitioners or is a stepchild of the petitioner or the court finds that the best interests of the child will be furthered thereby, the court in its discretion, after examination of a report ordered pursuant to 40-8-122, may waive the entry of an interlocutory decree and the waiting period of 6 months provided in 40-8-124 and grant a final decree of adoption if satisfied that the adoption is in the best interests of the child.

History: En. Sec. 10, Ch. 240, L. 1957; amd. Sec. 3, Ch. 199, L. 1961; R.C.M. 1947, 61-210; amd. Sec. 14, Ch. 530, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "If the child is a member of the extended family of" for "If the child is related by blood to" at the beginning of the section; substituted "the court in its discretion, after examination of a report ordered pursuant to 40-8-122" for "the court, after examination of the report specified in 40-8-122, if such report had been ordered by said court, in its discretion"; and made a minor change in grammar.

40-8-124. Interlocutory and final decree. (1) Upon examination of the report described in 40-8-122, if such report has been considered necessary by the court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why the petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of the citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person may appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at the hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who has consented in writing to an adoption or on any parent whose consent to adoption is not required under the provisions of 40-8-111, and service of process shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of social and rehabilitation services and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of the child.

History: En. Sec. 11, Ch. 240, L. 1957; amd. Sec. 4, Ch. 199, L. 1961; amd. Sec. 1, Ch. 2, L. 1963; amd. Sec. 48, Ch. 121, L. 1974; amd. Sec. 19, Ch. 33, L. 1977; R.C.M. 1947, 61-211.

40-8-125. Effect of final decree. (1) After the final decree of adoption is entered, the relation of parent and child and all the rights, duties, and other legal consequences of the natural relation of child and parent shall thereafter exist between such adopted child and the adoptive parents adopting such child and the kindred of the adoptive parents. From the date of the final decree of adoption, the child shall be entitled to inherit real and personal property from and through the adoptive parents and the kindred of the adoptive parents in accordance with the statutes of descent and distribution and the adoptive parents and their kindred shall be entitled to inherit real and personal property from and through the child in accordance with said statutes.

(2) After a final decree of adoption is entered, the natural parents and the kindred of the natural parents of the adopted child, unless they are the adoptive parents or the spouse of an adoptive parent, shall be relieved of all parental responsibilities for said child and have no rights over such adopted child or to his property by descent and distribution.

History: En. Sec. 12, Ch. 240, L. 1957; amd. Sec. 1, Ch. 102, L. 1965; R.C.M. 1947, 61-212.

40-8-126. Confidentiality of record and proceedings. (1) Unless the court shall otherwise order, all hearings held in proceedings under this part shall be confidential and shall be held in closed court without admittance of any person other than interested parties and their counsel.

(2) All papers and records pertaining to the adoption shall be kept as a permanent record of the court and withheld from inspection. No person shall have access to such records except:

(a) for good cause shown, on order of the judge of the court in which the decree of adoption was entered; or

(b) as provided in 50-15-206.

(3) All files and records pertaining to said adoption proceedings in the county departments of public welfare, the department of social and rehabilitation services, or any authorized agencies shall be confidential and withheld from inspection except upon order of court for good cause shown or as provided in 50-15-206.

History: En. Sec. 13, Ch. 240, L. 1957; amd. Sec. 18, Ch. 121, L. 1974; R.C.M. 1947, 61-213; amd. Sec. 3, Ch. 228, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2)(b); added "or as provided in 50-15-206" at the end of (3).

Saving Clause: Section 11, Ch. 228, L. 1981, was a saving section.

Severability: Section 12, Ch. 228, L. 1981, was a severability section.

40-8-127. Appeal. An appeal may be taken from any final order, judgment, or decree rendered hereunder in the district court by any person aggrieved thereby, in the manner provided for appeals from the court in other civil matters.

History: En. Sec. 14, Ch. 240, L. 1957; amd. Sec. 20, Ch. 33, L. 1977; R.C.M. 1947, 61-214.

40-8-128. Foreign adoption decrees. When the relationship of parent and child has been created by a decree of adoption of a court of any other state or nation, the rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined by 40-8-125.

History: En. Sec. 15, Ch. 240, L. 1957; R.C.M. 1947, 61-215.

Part 2

Adoption of Adults

40-8-201. Adoption of adult. A person who is an adult and has attained the age of legal majority may be adopted without the consent of his parents.

History: En. Sec. 1, Ch. 229, L. 1947; R.C.M. 1947, 61-139.

40-8-202. Procedure. Except as otherwise inconsistent with this part, the procedure and law for adoption of minors set forth in 40-8-106, 40-8-107, 40-8-121, 40-8-123, 40-8-124, and 40-8-125 shall be applicable in proceedings for the adoption of an adult under the provisions of this part, provided that provisions concerning an interlocutory decree shall not be applicable in the case of the adoption of an adult.

History: En. Sec. 2, Ch. 229, L. 1947; amd. Sec. 5, Ch. 199, L. 1961; R.C.M. 1947, 61-140.

CHAPTER 9

GRANDPARENT VISITATION

Part 1 — General Provisions

Section
40-9-101. Application of Montana Rules of Civil Procedure.
40-9-102. Grandparent visitation rights.

Part 1

General Provisions

40-9-101. Application of Montana Rules of Civil Procedure. (1) Except as otherwise provided, the Montana Rules of Civil Procedure apply to all proceedings under this section and 40-9-102.

(2) A proceeding for grandparent visitation under this section and 40-9-102 shall be entitled, "In re the visitation of ......"

(3) The initial pleading in all proceedings under this section and 40-9-102 shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings shall be denominated as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 1, Ch. 17, L. 1979.

40-9-102. Grandparent visitation rights. (1) If the father or mother of an unmarried child is deceased, the district court may grant to the parents of the deceased person reasonable visitation rights with the child.

(2) Visitation rights granted under this section may be granted only upon a finding by the court, after a hearing, that the visitation would be in the best interest of the child.

(3) This section does not apply if the child has been adopted by a person other than a stepparent or a grandparent. Visitation rights granted under this section terminate upon the adoption of the child by a person other than a stepparent or a grandparent.

History: En. Sec. 2, Ch. 17, L. 1979.

TITLE 41

MINORS

Ch.
1. Rights and Obligations of Minors.
2. Child Labor.
3. Child Abuse, Neglect, and Dependency.
4. Interstate Placement of Children.
5. Youth Court Act.
6. Interstate Compact on Juveniles.

CHAPTER 1

RIGHTS AND OBLIGATIONS OF MINORS

Part 1 — Minority

Section
41-1-101. Minors and adults defined.
41-1-102. Periods of minority — how calculated.
41-1-103. Unborn children.

Part 2 — Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages.
41-1-202. Enforcement of minor's rights.

Part 3 — Power to Contract

41-1-301. Delegation of power by minors forbidden.
41-1-302. Contracts of minors — disaffirmance.
41-1-303. Capacity of minors to borrow money for education.
41-1-304. When minors may disaffirm.
41-1-305. Minor cannot disaffirm contract for necessaries.
41-1-306. Minor cannot disaffirm certain obligations.

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41-1-401. Health professional defined.
41-1-402. Validity of consent of minor for health services.
41-1-403. Release of information by physician.
41-1-404. Financial responsibility of minor.
41-1-405. Emergencies and special situations.
41-1-406. Psychiatric or psychological counseling under urgent circumstances.
41-1-407. Immunity and responsibility of psychologist, physician, or health care facility.

Part 1

Minority

41-1-101. Minors and adults defined. (1) Minors are:
(a) males under 18 years of age;

(b) females under 18 years of age.

(2) All other persons are adults.

History: En. Secs. 10, 12, Civ. C. 1895; re-en. Secs. 3584, 3586, Rev. C. 1907; re-en. Sec. 5673, R.C.M. 1921; Cal. Civ. C. Sec. 25; Field Civ. C. Sec. 11; re-en. Sec. 5673, R.C.M. 1935; amd. Sec. 16, Ch. 240, L. 1971; amd. Sec. 23, Ch. 94, L. 1973; R.C.M. 1947, 64-101.

41-1-102. Periods of minority — how calculated. The periods specified in 41-1-101 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority.

History: En. Sec. 11, Civ. C. 1895; re-en. Sec. 3585, Rev. C. 1907; re-en. Sec. 5674, R.C.M. 1921; Cal. Civ. C. Sec. 26; re-en. Sec. 5674, R.C.M. 1935; R.C.M. 1947, 64-102.

41-1-103. Unborn children. A child conceived but not yet born is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth.

History: En. Sec. 13, Civ. C. 1895; re-en. Sec. 3587, Rev. C. 1907; re-en. Sec. 5675, R.C.M. 1921; Cal. Civ. C. Sec. 29; Field Civ. C. Sec. 12; re-en. Sec. 5675, R.C.M. 1935; R.C.M. 1947, 64-103.

Part 2

Civil Actions Concerning Minors

41-1-201. Liability of minors for wrongs — exemplary damages. A minor is civilly liable for a wrong done by him but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

History: En. Sec. 24, Civ. C. 1895; re-en. Sec. 3598, Rev. C. 1907; re-en. Sec. 5686, R.C.M. 1921; Cal. Civ. C. Sec. 41; re-en. Sec. 5686, R.C.M. 1935; R.C.M. 1947, 64-113(part).

41-1-202. Enforcement of minor's rights. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must conduct the same.

History: En. Sec. 25, Civ. C. 1895; re-en. Sec. 3599, Rev. C. 1907; re-en. Sec. 5687, R.C.M. 1921; Cal. Civ. C. Sec. 42; Field Civ. C. Sec. 25; re-en. Sec. 5687, R.C.M. 1935; R.C.M. 1947, 64-114.

Part 3

Power to Contract

41-1-301. Delegation of power by minors forbidden. A minor cannot give a delegation of power.

History: En. Sec. 16, Civ. C. 1895; re-en. Sec. 3590, Rev. C. 1907; re-en. Sec. 5678, R.C.M. 1921; Cal. Civ. C. Sec. 33; Field Civ. C. Sec. 15; re-en. Sec. 5678, R.C.M. 1935; R.C.M. 1947, 64-105.

41-1-302. Contracts of minors — disaffirmance. A minor may make a conveyance or other contract in the same manner as any other person, subject only to his power of disaffirmance under the provisions of this chapter and to the provisions of Title 40, chapter 1.

History: En. Sec. 17, Civ. C. 1895; re-en. Sec. 3591, Rev. C. 1907; re-en. Sec. 5679, R.C.M. 1921; Cal. Civ. C. Sec. 34; Field Civ. C. Sec. 16; re-en. Sec. 5679, R.C.M. 1935; R.C.M. 1947, 64-106.

41-1-303. Capacity of minors to borrow money for education. Any person who, being a minor, contracts to borrow money to defray the expenses of attending any college or university or other institution of higher education beyond high school shall have full legal capacity to act in his own behalf and shall have all the rights, powers, and privileges and be subject to the obligations of persons of full age with respect to any such contracts.

History: **En. Sec. 1, Ch. 34, L. 1963; R.C.M. 1947, 64-106.1.**

41-1-304. When minors may disaffirm. In all cases other than those specified by 41-1-303, 41-1-305, and 41-1-306, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in case of his death within that period, by his heirs or personal representatives.

History: **En. Sec. 18, Civ. C. 1895; re-en. Sec. 3592, Rev. C. 1907; re-en. Sec. 5680, R.C.M. 1921; Cal. Civ. C. Sec. 35; Field Civ. C. Sec. 17; re-en. Sec. 5680, R.C.M. 1935; R.C.M. 1947, 64-107; amd. Sec. 1, Ch. 29, L. 1979.**

41-1-305. Minor cannot disaffirm contract for necessaries. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

History: **En. Sec. 19, Civ. C. 1895; re-en. Sec. 3593, Rev. C. 1907; re-en. Sec. 5681, R.C.M. 1921; Cal. Civ. C. Sec. 36; Field Civ. C. Sec. 18; re-en. Sec. 5681, R.C.M. 1935; R.C.M. 1947, 64-108(part).**

41-1-306. Minor cannot disaffirm certain obligations. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

History: **En. Sec. 20, Civ. C. 1895; re-en. Sec. 3594, Rev. C. 1907; re-en. Sec. 5682, R.C.M. 1921; Cal. Civ. C. Sec. 37; Field Civ. C. Sec. 19; re-en. Sec. 5682, R.C.M. 1935; R.C.M. 1947, 64-109.**

Part 4

Validity of Consent to Medical Treatment

41-1-401. Health professional defined. Health professional as used in this part shall include only those persons licensed in Montana as physicians, psychiatrists, psychologists, or dentists.

History: **En. 69-6105.1 by Sec. 6, Ch. 312, L. 1974; R.C.M. 1947, 69-6105.1.**

41-1-402. Validity of consent of minor for health services. (1) The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including venereal disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. If emergency care is rendered, the parent, parents, or legal guardian shall be informed as soon as practical except under the circumstances mentioned in this subsection (1).

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity.

History: En. Sec. 1, Ch. 189, L. 1969; amd. Sec. 1, Ch. 312, L. 1974; amd. Sec. 23, Ch. 100, L. 1977; R.C.M. 1947, 69-6101.

41-1-403. Release of information by physician. (1) A treating physician or other health professional may, but shall not be obligated to, inform the spouse, parent, custodian, or guardian of any such minor in the circumstances as enumerated in 41-1-402 of any treatment given or needed when:

(a) in the judgment of the health professional, severe complications are present or anticipated;

(b) major surgery or prolonged hospitalization is needed;

(c) failure to inform the parent, parents, or legal guardian would seriously jeopardize the safety and health of the minor patient, younger siblings, or the public;

(d) to inform them would benefit the minor's physical and mental health and family harmony; or

(e) the hospital desires a third-party commitment to pay for services rendered or to be rendered.

(2) Notification or disclosure to the spouse, parent, parents, or legal guardian by the health professional shall not constitute libel or slander, a violation of the right of privacy, a violation of the rule of privileged communication, or any other legal basis of liability. When the minor is found not to be pregnant or not afflicted with venereal disease or not suffering from a drug- or substance-abuse, including alcohol, then no information with respect to any appointment, examination, test, or other health procedure shall be given to the parent, parents, or legal guardian, if they have not been already informed as permitted in this part, without the consent of the minor.

History: En. Sec. 2, Ch. 189, L. 1969; amd. Sec. 2, Ch. 312, L. 1974; R.C.M. 1947, 69-6102.

41-1-404. Financial responsibility of minor. Consent of the minor shall not be subject to later disaffirmance or revocation because of minority. The spouse, parent, parents, or legal guardian of a consenting minor shall not be liable for payment for such service unless the spouse, parent, parents, or legal guardian have expressly agreed to pay for such care. Minors so consenting for such health services shall thereby assume financial responsibility for the cost of said services, except those who are proven unable to pay and who receive the services in public institutions. If the minor is covered by health insurance, payment may be applied for services rendered.

History: En. Sec. 3, Ch. 189, L. 1969; amd. Sec. 3, Ch. 312, L. 1974; R.C.M. 1947, 69-6103.

41-1-405. Emergencies and special situations. (1) Any health professional may render or attempt to render emergency service or first aid, medical, surgical, dental, or psychiatric treatment, without compensation, to any injured person or any person regardless of age who is in need of immediate health care when, in good faith, the professional believes that the giving of aid is the only alternative to probable death or serious physical or mental damage.

(2) Any health professional may render nonemergency services to minors for conditions which will endanger the health or life of the minor if services would be delayed by obtaining consent from spouse, parent, parents, or legal guardian.

(3) No consent shall be required of any minor who does not possess the mental capacity or who has a physical disability which renders him incapable of giving his consent and who has no known relatives or legal guardians, if a physician determines the health service should be given.

(4) Self-consent of minors shall not apply to sterilization or abortion.

History: En. Sec. 4, Ch. 189, L. 1969; amd. Sec. 4, Ch. 312, L. 1974; R.C.M. 1947, 69-6104.

41-1-406. Psychiatric or psychological counseling under urgent circumstances. When executed by a minor, the consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances when the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be as valid and binding as if the minor had achieved majority. That is, such minor has the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent may not be subject to later disaffirmance by reason of such minority. The consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) is necessary in order to authorize the psychiatric or psychological counseling of such minor. However, no parent may be obligated for the cost of such counseling without his consent.

History: En. Sec. 1, Ch. 315, L. 1971; amd. Sec. 24, Ch. 100, L. 1977; R.C.M. 1947, 69-6106.

41-1-407. Immunity and responsibility of psychologist, physician, or health care facility. (1) No physician, surgeon, dentist, or health or mental health care facility may be compelled against their best judgment to treat a minor on his own consent.

(2) Nothing contained in this section shall be construed to relieve any physician, surgeon, dentist, or health or mental health care facility from liability for negligence in the diagnosis and treatment rendered such minor.

(3) In any case arising under the provisions of 41-1-406, the physician or licensed psychologist who provides the psychiatric or psychological counseling

services shall incur no civil or criminal liability by reason of having provided the counseling services, but such immunity shall not apply to any negligent acts or omissions.

History: (1), (2)En. Sec. 5, Ch. 189, L. 1969; amd. Sec. 5, Ch. 312, L. 1974; Sec. 69-6105, R.C.M. 1947; (3)En. Sec. 2, Ch. 315, L. 1971; Sec. 69-6107, R.C.M. 1947; R.C.M. 1947, 69-6105, 69-6107.

CHAPTER 2

CHILD LABOR

Part 1 — Prohibited Employment of Children

Section
41-2-101. Employment of children prohibited — when.
Sections 41-2-102 through 41-2-110 reserved.
41-2-111. Liability of parent.
41-2-112. Record of children under the age of sixteen years.
41-2-113. Age certificates.
41-2-114. Enforcement.
Sections 41-2-115 through 41-2-120 reserved.
41-2-121. Penalties.

Part 1

Prohibited Employment of Children

41-2-101. Employment of children prohibited — when. Any person, company, firm, association, or corporation engaged in business in this state or any agent, officer, foreman, or other employee having control or management of employees or having the power to hire or discharge employees who shall knowingly employ or permit to be employed any child under the age of 16 years to render or perform any service or labor, whether under contract of employment or otherwise, in, on, or about any mine; mill; smelter; workshop; factory; steam, electric, hydraulic, or compressed-air railroad; or passenger or freight elevator or where any machinery is operated or for any telegraph, telephone, or messenger company or in any occupation not herein enumerated which is known to be dangerous or unhealthful or which may be in any way detrimental to the morals of said child shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: En. Sec. 1, Ch. 99, L. 1907; Sec. 1746, Rev. C. 1907; re-en. Sec. 3095, R.C.M. 1921; re-en. Sec. 3095, R.C.M. 1935; R.C.M. 1947, 10-201.

41-2-102 through 41-2-110 reserved.

41-2-111. Liability of parent. Any parent, guardian, or other person having the care, custody, or control of any child under the age of 16 years who shall permit, suffer, or allow any such child to work or perform service for any person, company, firm, association, or corporation doing business in this state or who shall permit or allow any such child over whom he has such care, custody, or control to retain such employment as is prohibited in

41-2-101, whether under contract of employment or not, shall be guilty of a misdemeanor and punishable as hereinafter provided.

History: **En. Sec. 2, Ch. 99, L. 1907; Sec. 1747, Rev. C. 1907; re-en. Sec. 3096, R.C.M. 1921; re-en. Sec. 3096, R.C.M. 1935; R.C.M. 1947, 10-202.**

41-2-112. Record of children under the age of sixteen years. The commissioner of labor and industry shall compile and preserve in his office from reports made to him by the county superintendents of schools, as otherwise provided, a full and complete list of the name, age, date of birth, and sex of each child and the names of the parents or guardians of each child under the age of 16 years who is now or may hereafter become a resident of this state, and such list shall be the official record of the age of children in this state.

History: **En. Sec. 3, Ch. 99, L. 1907; Sec. 1748, Rev. C. 1907; re-en. Sec. 3097, R.C.M. 1921; re-en. Sec. 3097, R.C.M. 1935; R.C.M. 1947, 10-203.**

41-2-113. Age certificates. Upon obtaining the age of 16 years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom the child seeks employment. The employer, if such employment be given, must countersign the certificate and return it to the commissioner, who shall keep it on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 41-2-101 any child without such certificate showing the child to be at least 16 years of age is guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than 16 years of age.

History: **En. Sec. 4, Ch. 99, L. 1907; Sec. 1749, Rev. C. 1907; re-en. Sec. 3098, R.C.M. 1921; re-en. Sec. 3098, R.C.M. 1935; amd. Sec. 1, Ch. 100, L. 1977; R.C.M. 1947, 10-204.**

41-2-114. Enforcement. To enforce this part the commissioner of labor and industry and each county attorney shall, each upon his own volition or upon the sworn complaint of any reputable citizen that this part is being violated, make prosecutions for such violations.

History: **En. Sec. 5, Ch. 99, L. 1907; Sec. 1750, Rev. C. 1907; re-en. Sec. 3099, R.C.M. 1921; re-en. Sec. 3099, R.C.M. 1935; amd. Sec. 2, Ch. 100, L. 1977; R.C.M. 1947, 10-205.**

41-2-115 through 41-2-120 reserved.

41-2-121. Penalties. Every person, firm, company, association, or corporation who violates any of the provisions of this part shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $500 or by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 6, Ch. 99, L. 1907; Sec. 1751, Rev. C. 1907; re-en. Sec. 3100, R.C.M. 1921; re-en. Sec. 3100, R.C.M. 1935; R.C.M. 1947, 10-206.**

CHAPTER 3

CHILD ABUSE, NEGLECT, AND DEPENDENCY

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41-3-103. Jurisdiction and venue.
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Part 1

General

41-3-101. Declaration of policy. (1) It is hereby declared to be the policy of the state of Montana to:

(a) insure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible; and

(d) preserve the unity and welfare of the family whenever possible.

(2) It is the policy of this state to provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection. It is intended that the mandatory reporting of such cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life wherever appropriate.

History: (1)En. 10-1300 by Sec. 1, Ch. 328, L. 1974; Sec. 10-1300, R.C.M. 1947; (2)En. Sec. 1, Ch. 178, L. 1965; amd. Sec. 1, Ch. 292, L. 1973; Sec. 10-901, R.C.M. 1947; redes. 10-1303 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1303, R.C.M. 1947; R.C.M. 1947, 10-1300, 10-1303; amd. Sec. 1, Ch. 543, L. 1979.

41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Child" or "youth" means any person under 18 years of age.

(2) An "abused or neglected child" means a child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent or other person responsible for his welfare.

(3) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or mental injury, including injuries sustained as a result of excessive corporal punishment;

(b) commits or allows to be committed a sexual assault against the child or exploits the child or allows the child to be exploited for sexual purposes or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625;

(c) causes failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or health care, though financially able to do so or offered financial or other reasonable means to do so; or

(d) abandons the child by leaving him under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or by willfully surrendering physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(e) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parents have failed.

(4) "Adequate health care" means any medical or nonmedical remedial health care permitted or authorized under state law.

(5) "Threatened harm" means imminent risk of harm.

(6) "A person responsible for a child's welfare" means the child's parent, guardian, or foster parent; an employee of a public or private residential institution, facility, home, or agency; or any other person legally responsible for the child's welfare in a residential setting.

(7) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

(8) "Mental injury" means an identifiable and substantial impairment of the child's intellectual or psychological functioning.

(9) "Dependent youth" means a youth:

(a) who is abandoned;

(b) who is without parents or guardian or not under the care and supervision of a suitable adult;

(c) who has no proper guidance to provide for his necessary physical, moral, and emotional well-being;

(d) who is destitute;

(e) who is dependent upon the public for support; or

(f) whose parent or parents have voluntarily relinquished custody of the child and whose legal custody has been transferred to a licensed agency.

(10) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in this section.

(11) "Supervision" means the authority granted by a youth court or by a voluntary agreement of a parent to determine the foster care placement of a child and the length of stay of a child in foster care and provide for the needs of a child under subsection (1) of 41-3-104.

(12) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

History: En. 10-1301 by Sec. 2, Ch. 328, L. 1974; amd. Sec. 18, Ch. 100, L. 1977; R.C.M. 1947, 10-1301; amd. Sec. 2, Ch. 543, L. 1979; amd. Sec. 2, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Added "or commits or allows to be committed the act of sexual abuse of children as defined in subsection (1) of 45-5-625" at the end of (3)(b); added the language relating to willful surrender of custody at the end of (3)(d); inserted subsection (3)(e); and added subsections (11) and (12).

41-3-103. Jurisdiction and venue. (1) In all matters arising under this chapter, the youth court shall have concurrent jurisdiction with the district court over:

(a) all youths who are within the state of Montana for any purpose;

(b) any youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily removed himself from the state or the jurisdiction of the court; or

(c) any person who is alleged to have abused, neglected, or caused the dependency of a youth who is in the state of Montana for any purpose.

(2) Venue shall be determined pursuant to 41-5-204.

History: En. 10-1302 by Sec. 3, Ch. 328, L. 1974; R.C.M. 1947, 10-1302.

41-3-104. Payment for support of youth in need of care — reimbursement by county. (1) Whenever agreements are entered into by the department of social and rehabilitation services for placing a youth in need of care in a licensed family foster home, child care agency, group home, or treatment facility, the department shall pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of the children.

(2) On or before the 20th of each month the department shall present a claim to the county of residence of the children for no more than one-half the payments so made during the month. The county must make reimbursement to the department within 20 days after the claim is presented.

(3) The department shall conduct or arrange for the review required under 41-5-807 of a child placed in a licensed family foster home, child care agency, group home, or treatment facility if the child is placed under the supervision of the department or placed by the department or the department pays for the care of the child as set forth in this section.

History: En. Sec. 1, Ch. 48, L. 1949; amd. Sec. 1, Ch. 194, L. 1965; amd. Sec. 1, Ch. 264, L. 1971; amd. Sec. 48, Ch. 121, L. 1974; Sec. 10-524, R.C.M. 1947; redes. 10-1320 by Sec. 14, Ch. 328, L. 1974; amd. Sec. 22, Ch. 100, L. 1977; R.C.M. 1947, 10-1320; amd. Sec. 3, Ch. 543, L. 1979; amd. Sec. 1, Ch. 297, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "private" before "treatment facility" in (1); inserted "no more than" before "one-half the payments" in (2); added subsection (3); made minor changes in grammar.

Statement of Intent: The statement of intent attached to SB 228 (Ch. 297, L. 1981) provided: "A statement of intent is required for this bill because in addition to amending sections 41-3-104, 41-3-501, 41-5-801, and 53-4-112, the bill creates rulemaking authority for the Department of Social and Rehabilitation Services to administer a review of children in foster care under the department's supervision or for whom the department is making payment under section 41-3-104(2) or 41-5-801(2).

It is the intent of this bill to indicate the legislature's support of permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the numbers of children in foster care; to expediently return children to their natural homes when possible, or to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public funds and that the best interest of children in placement in Montana are being met by the department's program.

Rulemaking is primarily necessary to implement Section 2 [41-5-807] and subsection (3) of Section 1 of the bill [41-3-104]. These sections require that a foster care review committee be established by the court to conduct reviews of children in foster care and provide written reports to the youth court and the department. Rules would identify which children are to be reviewed, and would list precisely what information is to be shared with the review committee, when the committees are to conduct business, the general guidelines for the committees' operation, the time limitations for conducting the reviews, and who may participate in the review. As for the information to be reported, the rules will ask for:

(1) summary reports of the review to include the recommendations of the committee regarding the continuation or discontinuation of foster care and reasons; treatment needs of the child; and court action;

(2) sufficient information to allow the tracking of the reviews; to facilitate: follow-up services, compliance with court orders, agency decisions, and response to committee recommendations; and to provide necessary reports on the department's foster care program.

First adopted by the Senate Public Health, Welfare, and Safety Committee on February 9, 1981."

41-3-105. Recovery from parents or guardianship assets — division between state and county. (1) In the event any recovery is made from the parent or parents or guardianship assets of children for whom board, clothing, personal needs, and room have been paid by the state and county, any amount so recovered shall be divided equally between the department and the county of residence of such child or children.

(2) Any amount collected from the parents or guardianship assets when a child is placed in a foster home, child care agency, group home, or private treatment facility shall be transmitted to the department of social and rehabilitation services. The department shall then pay to the county one-half of the amount so collected.

History: (1)En. Sec. 2, Ch. 48, L. 1949; amd. Sec. 1, Ch. 264, L. 1971; Sec. 10-525, R.C.M. 1947; redes. 10-1321 by Sec. 14, Ch. 328, L. 1974; Sec. 10-1321, R.C.M. 1947; (2)En. 10-1313 by Sec. 9,

Ch. 328, L. 1974; Sec. 10-1313, R.C.M. 1947; R.C.M. 1947, 10-1313(part), 10-1321; amd. Sec. 2, Ch. 567, L. 1979.

41-3-106. Prosecution of offenders. (1) If the evidence indicates violation of the criminal code, it shall be the responsibility of the county attorney to file appropriate charges against the alleged offender.

(2) District court shall have original jurisdiction under this section.

History: En. 10-1322 by Sec. 12, Ch. 328, L. 1974; R.C.M. 1947, 10-1322.

41-3-107. Interagency cooperation. To effectuate the purposes of this chapter, the county welfare department shall cooperate with and shall seek the cooperation and involvement of all appropriate public and private agencies, including health, education, social services, and law enforcement agencies; juvenile courts; and any other agency, organization, or program providing or concerned with human services related to the prevention, identification, or treatment of child abuse or neglect. Such cooperation and involvement may not include joint case management but may include joint policy planning, public education, information services, staff development, and other training.

History: En. Sec. 4, Ch. 543, L. 1979.

41-3-108. Child protective teams. The county attorney or the county welfare department may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and his family. The supervisor of child protective services of the county welfare department or his designee shall serve as the team's coordinator. Members shall include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney.

History: En. Sec. 5, Ch. 543, L. 1979.

Part 2

Reports and Investigations

41-3-201. Reports. (1) When the professionals and officials listed in subsection (2) know or have reasonable cause to suspect that a child known to them in their professional or official capacity is an abused or neglected child, they shall report the matter promptly to the department of social and rehabilitation services or its local affiliate, which then shall notify the county attorney of the county where the child resides.

(2) Professionals and officials required to report are:

(a) physician, resident, intern, or member of a hospital's staff engaged in the admission, examination, care, or treatment of persons;

(b) a nurse, osteopath, chiropractor, podiatrist, medical examiner, coroner, dentist, optometrist, or any other health or mental health professional;

(c) Christian Science practitioner and religious healers;

(d) school teachers, other school officials, and employees who work during regular school hours;

(e) a social worker, operator or employee of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;

(f) foster care, residential, or institutional worker; or

(g) a peace officer or other law enforcement official.

(3) Any person may make a report under this section if he knows or has reasonable cause to suspect that a child is abused or neglected.

(4) No person listed in subsection (2) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.

(5) The reports referred to under this section shall contain:

(a) the names and addresses of the child and his or her parents or other persons responsible for his or her care;

(b) to the extent known, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries;

(c) any other information that the maker of the report believes might be helpful in establishing the cause of the injuries or showing the willful neglect and the identity of person or persons responsible therefor; and

(d) the facts which led the person reporting to believe that the child has suffered injury or injuries or willful neglect, within the meaning of this chapter.

History: En. Sec. 2, Ch. 178, L. 1965; amd. Sec. 2, Ch. 292, L. 1973; Sec. 10-902, R.C.M. 1947; redes. 10-1304 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1304; amd. Sec. 6, Ch. 543, L. 1979; amd. Sec. 3, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Substituted present subsection (2)(e) for former subsection (2)(e), which read: "(e) a social worker, licensed day-care center or any other licensed child-care facility;".

41-3-202. Action on reporting. (1) Upon receipt of a report as required by 41-3-201 that a child is or has been abused or neglected, a social worker or the county attorney or a peace officer shall promptly conduct a thorough investigation into the home of the child involved or any other place where the child is present, into the circumstances surrounding the injury of the child, and into all other nonfinancial matters which in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care.

(2) The social worker is responsible for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer shall, consistent with reasonable medical practice, have the right of access to the child for interviews, photographs, and securing physical evidence and have the right of access to relevant hospital and medical records pertaining to the child.

(3) If from the investigation it appears that the child suffered abuse or neglect, the department shall provide protective services to the child and may provide protective services to any other child under the same care. The department will advise the county attorney of its investigation.

(4) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department. The

department shall maintain a record system containing child abuse and neglect cases.

(5) Any person reporting abuse or neglect which involves acts or omissions on the part of a public or private residential institution, home, facility, or agency shall be responsible for ensuring that the report is made to the department of social and rehabilitation services, its local affiliate, and the county attorney of the county in which the facility is located.

History: En. Sec. 3, Ch. 178, L. 1965; amd. Sec. 3, Ch. 292, L. 1973; Sec. 10-903, R.C.M. 1947; redes. 10-1305 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1305; amd. Sec. 8, Ch. 543, L. 1979; amd. Sec. 3, Ch. 567, L. 1979.

41-3-203. Immunity from liability. Anyone investigating or reporting any incident of child abuse or neglect, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, unless the person acted in bad faith or with malicious purpose.

History: En. Sec. 4, Ch. 178, L. 1965; Sec. 10-904, R.C.M. 1947; redes. 10-1306 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1306; amd. Sec. 9, Ch. 543, L. 1979.

41-3-204. Admissibility and preservation of evidence. (1) In any proceeding resulting from a report made pursuant to the provisions of this chapter or in any proceeding where the report or its contents are sought to be introduced into evidence, the report or its contents or any other fact related to the report or to the condition of the child who is the subject of the report shall not be excluded on the ground that the matter is or may be the subject of a privilege related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

(2) Any person or official required to report under 41-3-201 may take or cause to be taken photographs of the area of trauma visible on a child who is the subject of a report. The cost of photographs taken under this section shall be paid by the county child protective service agency.

(3) When any person required to report under 41-3-201 finds visible evidence that a child has suffered abuse or neglect, he must include in his report either a written description or photographs of the evidence.

(4) A physician, either in the course of his providing medical care to a minor or after consultation with child protective services, the county attorney, or a law enforcement officer may require x-rays to be taken when in his professional opinion there is a need for radiological evidence of suspected abuse or neglect. X-rays may be taken under this section without the permission of the parent or guardian. The cost of the x-rays ordered and taken under this section shall be paid by the county child protective service agency.

(5) All written, photographic, or radiological evidence gathered under this section shall be sent to the local child protective services agency at the time the written confirmation report is sent or as soon thereafter as is possible.

History: En. Sec. 5, Ch. 178, L. 1965; Sec. 10-905, R.C.M. 1947; redes. 10-1307 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1307; amd. Sec. 10, Ch. 543, L. 1979.

41-3-205. Confidentiality. (1) The case records of the department of social and rehabilitation services and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect shall be kept confidential except as provided by this section. Any person who permits or encourages the unauthorized dissemination of their contents is guilty of a misdemeanor.

(2) Records may be used by interagency interdisciplinary child protective teams as authorized under 41-3-108 for the purposes of assessing the needs of the child and family, formulating a treatment plan, and monitoring the plan. Members of the team are required to keep information about the subject individuals confidential.

(3) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds such disclosure to be necessary for the fair resolution of an issue before it.

(4) Nothing in this section is intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

History: En. 10-1308 by Sec. 4, Ch. 328, L. 1974; R.C.M. 1947, 10-1308; amd. Sec. 11, Ch. 543, L. 1979.

41-3-206. Procedure in case of child's death. (1) Any person or official required to report by law who has reasonable cause to suspect that a child has died as a result of child abuse or neglect shall report his suspicion to the appropriate medical examiner or law enforcement officer. Any other person who has reasonable cause to suspect that a child has died as a result of child abuse or neglect may report his suspicion to the appropriate medical examiner or law enforcement officer.

(2) The medical examiner or coroner shall investigate the report and submit his findings, in writing, to the local law enforcement agency, the appropriate county attorney, the local child protective service, and, if the person making the report is a physician, the physician.

History: En. Sec. 7, Ch. 543, L. 1979.

41-3-207. Penalty for failure to report. Any person, official, or institution required by law to report known or suspected child abuse or neglect or required to perform any other act who fails to do so or who prevents another person from reasonably doing so is civilly liable for the damages proximately caused by such failure or prevention.

History: En. Sec. 15, Ch. 543, L. 1979.

41-3-208. Rulemaking authority. The department of social and rehabilitation services shall adopt rules to govern the procedures used by department personnel and by employees of county welfare departments in preparing and processing reports and in making investigations authorized by this chapter or 41-5-805.

History: En. Sec. 1, Ch. 567, L. 1979.

Part 3

Protective Care

41-3-301. Emergency protective service. (1) Any child protective social worker of the department of social and rehabilitation services, the county welfare department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action.

(2) No child who has been removed from his home or any other place for his protection or care may be placed in a jail.

(3) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing.

History: En. 10-1309 by Sec. 5, Ch. 328, L. 1974; amd. Sec. 19, Ch. 100, L. 1977; R.C.M. 1947, 10-1309; amd. Sec. 12, Ch. 543, L. 1979.

41-3-302. Responsibility of providing protective services. (1) The department of social and rehabilitation services and the county welfare department shall have the primary responsibility to provide the protective services authorized by this chapter and shall have the authority pursuant to this chapter to take temporary or permanent custody of a child when ordered to do so by the court, including the right to give consent to adoption.

(2) The county welfare department shall respond to emergency reports of known or suspected child abuse or neglect 24 hours a day, 7 days a week.

History: En. 10-1315 by Sec. 11, Ch. 328, L. 1974; R.C.M. 1947, 10-1315; amd. Sec. 13, Ch. 543, L. 1979; amd. Sec. 4, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Deleted ", limited," after "temporary" in (1).

41-3-303. Guardian ad litem. In every judicial proceeding the court shall appoint for any child alleged to be abused or neglected a guardian ad litem who, whenever possible, shall be an attorney. When necessary the guardian ad litem may serve at public expense.

History: En. Sec. 14, Ch. 543, L. 1979.

Part 4

Abuse, Neglect, or Dependency Proceedings

41-3-401. Abuse, neglect, and dependency petitions. (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, or dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary. Investigations as to financial status may not be made prior to the adjudicatory hearing provided for in 41-3-404.

(2) Upon receipt of a petition, the court shall set a date for an adjudicatory hearing on the petition. Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure

shall apply except as herein modified. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. If such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice shall be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of the department of social and rehabilitation services, a citation shall be issued and served upon a representative of the department prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth and the name and address of his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section does not apply to a petition for temporary investigative authority and protective services.

History: En. 10-1310 by Sec. 6, Ch. 328, L. 1974; amd. Sec. 20, Ch. 100, L. 1977; R.C.M. 1947, 10-1310; amd. Sec. 4, Ch. 567, L. 1979; amd. Sec. 5, Ch. 511, L. 1981.

Compiler's Comments

1981 Amendment: Substituted present subsection (10)(c) for former subsection (10)(c), which read: "(c) limited legal custody".

41-3-402. Petition for temporary investigative authority and protective services. (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a department of social and rehabilitation services report stating in detail the facts upon which the request is based.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(1) thru (3).

41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the department of social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to comply immediately with the terms thereof or, upon failure to so comply, to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the department of social and rehabilitation services until further order.

(2) The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department of social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth.

History: En. 10-1311 by Sec. 7, Ch. 328, L. 1974; amd. Sec. 21, Ch. 100, L. 1977; R.C.M. 1947, 10-1311(4), (5).

41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401 or 41-3-402, the court shall determine whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse, neglect, or dependency, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803, apply.

(4) (a) If the court determines that the youth is not an abused, neglected, or dependent child, the petition shall be dismissed and any order made pursuant to 41-3-403 shall be vacated.

(b) If the court determines that the youth is an abused, neglected, or dependent child, the court shall set a date for a dispositional hearing and order any necessary or required investigations. The dispositional hearing shall be scheduled as soon as practicable. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(2).

History: En. 10-1312 by Sec. 8, Ch. 328, L. 1974; R.C.M. 1947, 10-1312; amd. Sec. 19, Ch. 543, L. 1979; amd. Sec. 5, Ch. 567, L. 1979.

41-3-405. Investigation of parents' or guardian's financial ability. (1) Whenever a court determines a youth to be an abused, neglected, or dependent child pursuant to 41-3-404, the court shall issue an order directing the county welfare department of the county in which the petition was filed to conduct an investigation of the financial status of the child's parents or the extent of guardianship assets.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the child and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the child in a foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the clerk of court before the time fixed for the dispositional hearing.

(3) A copy of the written report shall be provided to all parties to the proceeding before the time set for the dispositional hearing.

History: En. 10-1313 by Sec. 9, Ch. 328, L. 1974; R.C.M. 1947, 10-1313(part); amd. Sec. 6, Ch. 567, L. 1979.

41-3-406. Dispositional hearing. (1) If a youth is found to be abused, neglected, or dependent under 41-3-404, the court after the dispositional hearing may enter its judgment making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with his parents or guardian subject to those conditions and limitations the court may prescribe;

(b) transfer legal custody to any of the following:

(i) department of social and rehabilitation services;

(ii) a child-placing agency willing and able to assume responsibility for the education, care, and maintenance of the youth and which is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who, after study by a social service agency designated by the court, is found by the court to be qualified to receive and care for the youth;

(c) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling;

(d) order such further care and treatment as the court may deem in the best interest of the youth.

(2) Whenever the court vests legal custody in any agency, institution, or department, it shall transmit with the dispositional judgment copies of any medical report and such other clinical, predisposition, or other reports and information as may be pertinent to the care and treatment of the youth.

(3) Any youth found to be abused, neglected, or dependent may be committed or the court may make such other disposition of the child as the court deems best for his social and physical welfare. The form of commitment shall be as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of ....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., minor of this county, was charged on the petition of ...., county attorney of .... County, with being an abused or neglected or dependent child. Upon due proof I find that it is for the best interests of the child that he be taken from the custody of his parents, guardian, or other person having custody of him.

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
....	....	....
....	....	....

The child's guardian is ....
The child is in the custody of ....

It is ordered that .... be committed to .... until discharged as provided by law.

Witness my hand this .... day of ...., A.D. 19...

....
Judge

(4) Transfer of legal custody of a child shall include guardianship of any assets or estate of the child, unless otherwise specified by the court.

(5) Except in cases in which the court permanently terminates all parental rights or rights of the guardian of the youth, the court shall retain jurisdiction over the case and may subsequently modify any disposition ordered pursuant to this section.

History: En. 10-1314 by Sec. 10, Ch. 328, L. 1974; R.C.M. 1947, 10-1314; amd. Sec. 7, Ch. 567, L. 1979; amd. Sec. 170, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: In (3), deleted reference to the Montana children's center.

41-3-407. Order for financial support. (1) Whenever a youth is placed in a foster home, child care agency, group home, or private treatment facility under 41-3-406, the court shall determine the ability of the youth's parents or guardian to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. This question of financial ability shall be considered at the dispositional hearing, and evidence concerning financial status may be introduced. In determining financial ability the court shall consider the report prepared pursuant to 41-3-405 and any other evidence introduced at the dispositional hearing.

(2) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the court may modify the order.

History: En. Sec. 8, Ch. 567, L. 1979.

Part 5

Foster Homes and Other Private Institutions

41-3-501. Definitions. (1) Any person owning or operating a home or institution into which home or institution he takes any child or children for the purpose of caring for them and maintaining them and for which care and maintenance he receives money or other consideration of value, and which child is neither his son, daughter, nor ward shall be deemed to be an "operator" of a "foster home or boarding home" within the meaning of this chapter, except that this chapter shall not apply when any person accepts such care and custody of such child on a temporary basis and simply as a temporary accommodation for the parent or parents, guardian, or relative of such child.

(2) The word "person" where used in this chapter shall include any individual, partnership, voluntary association, or corporation.

History: En. Sec. 1, Ch. 178, L. 1947; Sec. 10-520, R.C.M. 1947; redes. 10-1316 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1316; amd. Sec. 3, Ch. 297, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "nor related to him by blood" after "nor ward" near the middle of (1); made minor changes in phraseology.

41-3-502. License required. No person shall maintain or operate a foster or boarding home for any child or children within the meaning of this chapter without first securing a license in writing from the department of social and rehabilitation services. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-521, R.C.M. 1947; redes. 10-1317 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1317.

41-3-503. Issuance of license — authority of issuing agency. The department of social and rehabilitation services is hereby authorized to issue licenses to persons conducting boarding or foster homes and to prescribe the conditions upon which such licenses shall be issued and to make such rules as it may deem advisable for the operation and regulation of foster and boarding homes for minor children consistent with the welfare of such children. Such licensing agency shall have the power and authority to inspect all such licensed foster and boarding homes through its duly authorized representatives and to cancel licenses theretofore issued for the failure to observe such rules. The person operating such homes shall give to such representative such information as may be required and afford him every reasonable facility for observing the operation of such homes.

History: En. Sec. 3, Ch. 178, L. 1947; amd. Sec. 47, Ch. 121, L. 1974; Sec. 10-522, R.C.M. 1947; redes. 10-1318 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1318.

41-3-504. Penalty. Any person who maintains or conducts a foster or boarding home or assists in conducting or maintaining such home without having first obtained a license in writing as hereto provided shall be guilty of a misdemeanor and upon conviction be punished by a fine not to exceed $100.

History: En. Sec. 4, Ch. 178, L. 1947; Sec, 10-523, R.C.M. 1947; redes. 10-1319 by Sec. 14, Ch. 328, L. 1974; R.C.M. 1947, 10-1319.

Part 6

Parent-Child Legal Relationship Termination

Part Compiler's Comments

1981 Title: The title to Ch. 420, L. 1981 (HB 815), read: "An act to provide procedures and guidelines for terminating the legal relationship between parent and child."

Codification Instruction: Section 10, Ch. 420, L. 1981, provided: "Sections 1 through 8 [9] [41-3-601 through 41-3-603 and 41-3-607 through 41-3-612] are intended to be codified as an integral part of Title 41, chapter 3."

Source: Derived in large part from sections 19-4-101, et seq., Colorado Statutes, 1973.

41-3-601. Short title. This part may be cited as the "Parent-Child Legal Relationship Termination Act of 1981".

History: En. Sec. 1, Ch. 420, L. 1981.

41-3-602. Purpose. This part provides procedures and criteria by which the parent-child legal relationship may be terminated by a court if the relationship is not in the best interest of the child. The termination of the parent-child legal relationship provided for in this part is to be used in those situations where there is a determination that a child is abused, neglected, or dependent, as defined in 41-3-102.

History: En. Sec. 2, Ch. 420, L. 1981.

41-3-603. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Guardian ad litem" means a person appointed to represent a child who is the subject of a written motion for the termination of the parent-child legal relationship.

(2) "Youth in need of care" means a youth who is dependent, abused, or neglected as defined in 41-3-102.

(3) "Parent-child legal relationship" means the legal relationship that exists between a child and his birth or adoptive parents as provided in Title

40, chapter 6, part 2, unless that relationship has been terminated by competent judicial decree as provided in this part or in 40-6-124 or in 40-6-234.

(4) "Treatment plan" means a written agreement between the department [of social and rehabilitation services] or court and the parents that includes action that must be taken to resolve the condition or conduct of the parents that resulted in the need for protective services for the child. The treatment plan may involve other parties, if necessary, for protective services.

History: **En. Sec. 3, Ch. 420, L. 1981.**

41-3-604 through 41-3-606 reserved.

41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship shall be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination. Termination of a parent-child legal relationship shall be considered at a dispositional hearing held pursuant to 41-3-406, following or together with an adjudicatory hearing held pursuant to 41-3-404.

(2) After the county attorney files a petition for termination of a parent-child relationship pursuant to this part, parents shall be advised of the right to counsel, and counsel shall be appointed in accordance with 41-3-401(12).

(3) An attorney, who whenever possible shall be the child's previously appointed guardian ad litem, shall be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The attorney shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship.

History: **En. Sec. 4, Ch. 420, L. 1981.**

41-3-608. Notice. Before a termination of the parent-child legal relationship based on abandonment may be ordered, the court shall determine whether the rules of civil procedure relating to service of process on the parents have been followed. If the parents were not served personally, the petitioner must file an affidavit stating what efforts have been made to locate the parent or parents of the child. The affidavit must be filed at least 10 days prior to the hearing.

History: **En. Sec. 5, Ch. 420, L. 1981.**

41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that the circumstances contained in subsection (1)(a), (1)(b), or (1)(c), as follows, exist:

(a) the parents have relinquished the child pursuant to 40-6-132 through 40-6-134;

(b) the child has been abandoned by his parents as set forth in 41-3-102(3)(d); or

(c) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court must enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making such determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of the child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially-ordered long-term confinement of the parent;

(f) the injury or death of a sibling due to proven parental abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

History: En. Sec. 6, Ch. 420, L. 1981.

41-3-610. Review following termination. (1) At the conclusion of a hearing in which the court orders termination of the parent-child legal relationship, the court shall order that a review hearing be held within 180 days following the date of the termination.

(2) At the review hearing, the agency or individual vested with the custody of the child shall report to the court whether the plan for permanent placement of the child has been accomplished. The guardian ad litem shall submit to the court a written report with recommendations, based upon an independent investigation, for disposition meeting the best interests of the child.

(3) The court may order the agency or individual vested with custody of the child to report, at appropriate intervals, on the status of the child until the plan for permanent placement of the child has been accomplished.

History: En. Sec. 7, Ch. 420, L. 1981.

41-3-611. Effect of decree. (1) An order for the termination of the parent-child legal relationship divests the child and the parents of all legal rights, powers, immunities, duties, and obligations with respect to each other as provided in Title 40, chapter 6, part 2, except the right of the child to inherit from the parent.

(2) An order or decree entered pursuant to this part may not disentitle a child to any benefit due him from any third person, including but not limited to any Indian tribe, agency, state, or the United States.

(3) After the termination of a parent-child legal relationship, the former parent is neither entitled to any notice of proceedings for the adoption of the child nor has any right to object to the adoption or to participate in any other placement proceedings held pursuant to 41-3-609.

History: **En. Sec. 8, Ch. 420, L. 1981.**

41-3-612. Appeals. Appeals of court orders or decrees made under this part shall be given precedence on the calendar of the supreme court over all other matters, unless otherwise provided by law.

History: **En. Sec. 9, Ch. 420, L. 1981.**

CHAPTER 4

INTERSTATE PLACEMENT OF CHILDREN

Part 1 — Text of Compact

Section
41-4-101. Enactment — provisions.
41-4-102. Financial responsibility.
41-4-103. Appropriate public authorities defined.
41-4-104. Appropriate authority in the receiving state.
41-4-105. Agreements.
41-4-106. Requirements for visitation, inspection, and supervision.
41-4-107. Certain laws not applicable.
41-4-108. Court jurisdiction retained.
41-4-109. Executive head defined.

Part 1

Text of Compact

41-4-101. Enactment — provisions. The Interstate Compact on the Placement of Children is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I. Purpose and Policy

It is the purpose and policy of the party states to cooperate with each other in the interstate placement of children to the end that:

(1) each child requiring placement shall receive the maximum opportunity to be placed in a suitable environment and with persons or institutions having appropriate qualifications and facilities to provide a necessary and desirable degree and type of care;

(2) the appropriate authorities in a state where a child is to be placed may have full opportunity to ascertain the circumstances of the proposed

placement, thereby promoting full compliance with applicable requirements for the protection of the child;

(3) the proper authorities of the state from which the placement is made may obtain the most complete information on the basis of which to evaluate a projected placement before it is made;

(4) appropriate jurisdictional arrangements for the care of children will be promoted.

Article II. Definitions

As used in this compact:

(1) "child" means a person who, by reason of minority, is legally subject to parental, guardianship, or similar control;

(2) "sending agency" means a party state, officer or employee thereof; a subdivision of a party state or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency, or other entity which sends, brings, or causes to be sent or brought any child to another party state;

(3) "receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies and whether for placement with state or local public authorities or for placement with private agencies or persons;

(4) "placement" means the arrangement for the care of a child in a family free or boarding home or in a child-caring agency or institution but does not include any institution caring for the mentally ill, mentally defective, or epileptic or any institution primarily educational in character and any hospital or other medical facility.

Article III. Conditions for Placement

(1) No sending agency shall send, bring, or cause to be sent or brought into any other party state any child for placement in foster care or as a preliminary to a possible adoption unless the sending agency shall comply with each and every requirement set forth in this article and with the applicable laws of the receiving state governing the placement of children therein.

(2) Prior to sending, bringing, or causing any child to be sent or brought into a receiving state for placement in foster care or as a preliminary to a possible adoption, the sending agency shall furnish the appropriate public authorities in the receiving state written notice of the intention to send, bring, or place the child in the receiving state. The notice shall contain:

(a) the name, date, and place of birth of the child;

(b) the identity and address or addresses of the parents or legal guardian;

(c) the name and address of the person, agency, or institution to or with which the sending agency proposes to send, bring, or place the child;

(d) a full statement of the reasons for such proposed action and evidence of the authority pursuant to which the placement is proposed to be made.

(3) Any public officer or agency in a receiving state which is in receipt of a notice pursuant to (2) of this article may request of the sending agency or any other appropriate officer or agency of or in the sending agency's state and shall be entitled to receive therefrom such supporting or additional information as it may deem necessary under the circumstances to carry out the purpose and policy of this compact.

(4) The child shall not be sent, brought, or caused to be sent or brought into the receiving state until the appropriate public authorities in the receiving state shall notify the sending agency, in writing, to the effect that the proposed placement does not appear to be contrary to the interests of the child.

Article IV. Penalty for Illegal Placement

The sending, bringing, or causing to be sent or brought into any receiving state of a child in violation of the terms of this compact shall constitute a violation of the laws respecting the placement of children of both the state in which the sending agency is located or from which it sends or brings the child and of the receiving state. Such violation may be punished or subjected to penalty in either jurisdiction in accordance with its laws. In addition to liability for any such punishment or penalty, any such violation shall constitute full and sufficient grounds for the suspension or revocation of any license, permit, or other legal authorization held by the sending agency which empowers or allows it to place or care for children.

Article V. Retention of Jurisdiction

(1) The sending agency shall retain jurisdiction over the child sufficient to determine all matters in relation to the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending agency's state, until the child is adopted, reaches majority, becomes self-supporting, or is discharged with the concurrence of the appropriate authority in the receiving state. Such jurisdiction shall also include the power to effect or cause the return of the child or his transfer to another location and custody pursuant to law. The sending agency shall continue to have financial responsibility for support and maintenance of the child during the period of the placement. Nothing contained herein shall defeat a claim of jurisdiction by receiving state sufficient to deal with an act of delinquency or crime committed therein.

(2) When the sending agency is a public agency, it may enter into an agreement with an authorized public or private agency in the receiving state providing for the performance of one or more services in respect of such case by the latter as agent for the sending agency.

(3) Nothing in this compact shall be construed to prevent a private charitable agency authorized to place children in the receiving state from performing services or acting as agent in that state for a private charitable agency of the sending state, nor to prevent the agency in the receiving state from discharging financial responsibility for the support and maintenance of a child who has been placed on behalf of the sending agency without relieving the responsibility set forth in (1) hereof.

Article VI. Institutional Care of Delinquent Children

A child adjudicated delinquent may be placed in an institution in another party jurisdiction pursuant to this compact, but no such placement shall be made unless the child is given a court hearing on notice to the parent or guardian with opportunity to be heard prior to his being sent to such other party jurisdiction for institutional care and the court finds that:

(1) equivalent facilities for the child are not available in the sending agency's jurisdiction; and

(2) institutional care in the other jurisdiction is in the best interest of the child and will not produce undue hardship.

Article VII. Compact Administrator

The executive head of each jurisdiction party to this compact shall designate an officer who shall be general coordinator of activities under this compact in his jurisdiction and who, acting jointly with like officers of other party jurisdictions, shall have power to promulgate rules to carry out more effectively the terms and provisions of this compact.

Article VIII. Limitations

This compact shall not apply to:

(1) the sending or bringing of a child into a receiving state by his parent, step-parent, grandparent, adult brother or sister, adult uncle or aunt, or his guardian and leaving the child with any such relative or nonagency guardian in the receiving state;

(2) any placement, sending, or bringing of a child into a receiving state pursuant to any other interstate compact to which both the state from which the child is sent or brought and the receiving state are party or to any other agreement between said states which has the force of law.

Article IX. Enactment and Withdrawal

This compact shall be open to joinder by any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and with the consent of congress, the government of Canada or any province thereof. It shall become effective with respect to any such jurisdiction when such jurisdiction has enacted the same into law. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until 2 years after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other party jurisdiction. Withdrawal of a party state shall not affect the rights, duties, and obligations under this compact of any sending agency therein with respect to a placement made prior to the effective date of withdrawal.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 10-1401 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1401.

41-4-102. Financial responsibility. Financial responsibility for any child placed pursuant to the provisions of the Interstate Compact on the Placement of Children shall be determined in accordance with the provisions of Article V thereof in the first instance. However, in the event of partial or complete default of performance thereunder, the provisions of Title 40, chapter 5 (Revised Uniform Reciprocal Enforcement of Support Act) and 41-3-104, 41-3-404, and 41-3-405 also may be invoked.

History: En. 10-1402 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1402; amd. Sec. 18, Ch. 543, L. 1979.

41-4-103. Appropriate public authorities defined. The "appropriate public authorities" as used in Article III of the Interstate Compact on the Placement of Children shall, with reference to this state, mean the department of social and rehabilitation services, and said department shall receive and act with reference to notices required by said Article III.

History: En. 10-1403 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1403.

41-4-104. Appropriate authority in the receiving state. As used in Article V(1) of the Interstate Compact on the Placement of Children, the phrase "appropriate authority in the receiving state" with reference to this state shall mean the department of social and rehabilitation services.

History: En. 10-1404 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1404.

41-4-105. Agreements. The officers and agencies of this state and its subdivisions having authority to place children are hereby empowered to enter into agreements with appropriate officers or agencies of or in other party states pursuant to Article V(2) of the Interstate Compact on the Placement of Children. Any such agreement which contains a financial commitment or imposes a financial obligation on this state or subdivision or agency thereof shall not be binding unless it has the approval in writing of the state treasurer in the case of the state and of the chief local fiscal officer in the case of a subdivision of the state.

History: En. 10-1405 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1405.

41-4-106. Requirements for visitation, inspection, and supervision. Any requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another party state which may apply under 41-3-502, 41-3-503, and 53-4-113 are considered to be met if performed pursuant to an agreement entered into by appropriate officers or agencies of this state or a subdivision thereof as contemplated by Article V(2) of the Interstate Compact on the Placement of Children.

History: En. 10-1406 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1406.

41-4-107. Certain laws not applicable. The provisions of 53-4-114 shall not apply to placements made pursuant to the Interstate Compact on the Placement of Children.

History: En. 10-1407 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1407.

41-4-108. Court jurisdiction retained. Any court having jurisdiction to place delinquent children may place such a child in an institution of or in another state pursuant to Article VI of the Interstate Compact on the

Placement of Children and shall retain jurisdiction as provided in Article V thereof.

History: **En. 10-1408 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1408.**

41-4-109. Executive head defined. As used in Article VII of the Interstate Compact on the Placement of Children, the term "executive head" means the governor. The governor is hereby authorized to appoint a compact administrator in accordance with the terms of said Article VII.

History: **En. 10-1409 by Sec. 1, Ch. 376, L. 1975; R.C.M. 1947, 10-1409.**

CHAPTER 5

YOUTH COURT ACT

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Chapter Compiler's Comments

Interim Study: SJR 29 (1981) requested an interim study of the need to clarify the definition of youth in need of supervision, of the policies and practices of agencies financing services for youth placed out of their homes, of the need for a simplified mechanism to distribute funds for youth placed out of their homes, and of the problems of chemically dependent and emotionally disturbed youth in private and public institutions and required a report and recommendations to the legislature. The Legislative Council designated the Joint Subcommittee on Human Services to conduct the study.

Part 1

General

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act shall be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to remove from youth committing violations of the law the element of retribution and to substitute therefor a program of supervision, care, rehabilitation, and, in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of (1) and (2) of this section in a family environment whenever possible, separating the youth from his parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are assured a fair hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979.

41-5-103. Definitions. For the purposes of the Montana Youth Court Act, unless otherwise stated the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

(3) "Commit" means to transfer to legal custody.

(4) "Court", when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties, and responsibilities.

(7) "Judge", when used without further qualification, means the judge of the youth court.

(8) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care and includes the youth court, the judge, and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors;

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian or is ungovernable and beyond their control;

(c) being subject to compulsory school attendance, is habitually truant from school; or

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in 41-3-102.

(15) "Custodian" means a person other than a parent or guardian to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian, or spouse.

(17) "State youth correctional facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills school in Miles City, and Mountain View school in Helena, and Swan River youth forest camp.

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities.

(20) "District youth guidance home" means a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state youth correctional facilities, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision.

(21) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made under the jurisdiction of a youth court proceeding.

History: Ap. p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap. p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979.

41-5-104. County commissioners authorized to provide funds. The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives, which committee shall be designated as a youth court committee. This committee shall be subject to the call of the judge to meet and confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention homes.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240.

41-5-106. Order of adjudication — noncriminal. No commitment of any youth to any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235.

Part 2

Youth Court — Jurisdiction

41-5-201. Youth court judge. (1) Each judicial district in the state shall have at least one judge of the youth court. His duties shall be to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district shall be the principal consideration of the rule.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part).

41-5-202. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in civil proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223.

41-5-203. Jurisdiction of the court. (1) Except as provided in subsection (2), the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justice, municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage violations alleged to have been committed by a youth.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979.

41-5-204. Venue and transfer. (1) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

(a) the county in which the youth is apprehended or found;

(b) the county in which the youth is alleged to have violated the law;

(c) the county of residence of the youth's parents or guardian.

(2) A change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to assure a fair, impartial, and speedy hearing and final disposition of the case.

(3) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206, the court in the county where the offense occurred shall serve as a transfer hearing court, and if the youth is to be tried in district court, the charge shall be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207.

41-5-205. Retention of jurisdiction. Once a court obtains jurisdiction over a youth, the court retains jurisdiction unless terminated by the court or by mandatory termination in the following cases:

(1) at the time the proceedings are transferred to adult criminal court;

(2) at the time of commitment of the youth to the custody of the department of institutions;

(3) in any event, at the time the youth reaches the age of 21 years.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208.

41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in 45-5-101;

(ii) arson as defined in 45-6-103;

(iii) aggravated assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) sexual intercourse without consent as defined in 45-5-503;

(vii) aggravated kidnapping as defined in 45-5-303;

(viii) possession of explosives as defined in 45-8-335;

(ix) criminal sale of dangerous drugs for profit as included in 45-9-101;

(x) attempt as defined in 45-4-103 of any of the acts enumerated in subsections (1)(a)(i) through (1)(a)(ix);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(c) the severity of the offense;

(d) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth may be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) Any offense not enumerated in subsection (1)(a) that arises during the commission of a crime enumerated in subsection (1)(a) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1)(a), upon motion of the county attorney and acceptance by the district court judge.

(7) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it considers proper.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsections (1)(a)(x), (2)(c), and (6); substituted "may" for "shall" after "court" in the introductory clause of (2); added the provision relating to prior juvenile history with youth courts to the end of (2)(b).

41-5-207. Court costs and expenses. The following expenses shall be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

(1) the costs of medical and other examinations and treatment of a youth ordered by the court;

(2) reasonable compensation for services and related expenses for counsel appointed by the court for a party;

(3) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;

(4) reasonable compensation of a guardian ad litem appointed by the court; and

(5) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226.

Part 3

Detention Procedure

41-5-301. Preliminary investigation and disposition. (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms thereof, the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the department of social and rehabilitation services.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether such detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken;

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and his parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided such treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first detained or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209.

41-5-302. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department of social and rehabilitation services, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211.

41-5-303. Rights of youth upon apprehension. When a youth is detained for investigation or questioning upon a matter which could result in a petition alleging that the youth being detained is either delinquent or in need of supervision, the following requirements must be met:

(1) The youth shall be immediately and effectively advised of his constitutional rights and his rights under this chapter.

(2) The youth may waive such rights under the following situations:

(a) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(b) when the youth is over the age of 12 years and the youth and his parents agree, they may make an effective waiver; and

(c) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979.

41-5-304. Fingerprints and photographs. (1) Title 46 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) no youth may be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) no fingerprint records or photographs may be filed with the federal bureau of investigation, the Montana department of justice, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(2) Fingerprint records and photographs shall be retained by the originating agency only until the youth reaches the age of majority unless the judge orders the records destroyed at an earlier date. Any such record may be used by the originating agency for comparison and identification purposes in any

other investigation only when probable cause is established before the youth court judge that the youth is a principal suspect.

History: **En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted the first sentence of (2) which provided for destruction of fingerprint and photograph records at completion of proceedings; substituted "shall" for "may" before "be retained" in the first sentence of (2); deleted "for a specific period when ordered by the court for good cause shown" after "originating agency" near the middle of (2); added the language concerning retaining records until the youth's majority and use of such records to the end of (2).

41-5-305. Detention and shelter care of youth. (1) A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or the property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: **En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212.**

41-5-306. Place of shelter care or detention. (1) A youth alleged to be a delinquent youth or youth in need of supervision may be sheltered only in:

(a) a licensed foster home or a home approved by the court for the provision of shelter care of youth;

(b) a facility operated by a licensed child welfare agency;

(c) a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;

(d) any other suitable place or facility designated or operated by the court for the supervision of youth in shelter care.

(2) The youth may be detained in a jail or other facility for the detention of adults only if:

(a) the facilities in subsection (1) are not available or do not provide adequate security;

(b) the detention is in an area physically and visually separate and removed from those of adults;

(c) it appears to the satisfaction of the court that public safety and protection reasonably require detention; and

(d) the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of 18 years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214.

41-5-307. Release or delivery from custody. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer must notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and is completely separated from adult offenders. If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213.

Part 4

Informal Proceeding

41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing and signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2).**

41-5-402. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3).**

41-5-403. Disposition permitted under informal adjustment. (1) The following dispositions may be imposed by informal adjustment:

(a) probation;

(b) placement of the youth in a licensed foster home or other home approved by the court;

(c) placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer of legal custody of the youth to the department of institutions, provided that such commitment does not authorize the department of institutions to place the youth in a state youth correctional facility, and such commitment may not exceed a period of 6 months without a subsequent order of the court, after notice and hearing;

(e) restitution upon approval of the youth court judge.

(2) In determining whether restitution is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;

(b) ability of the youth to pay;

(c) ability of the parents or legal guardian to pay;

(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case.

History: **En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981.**

Compiler's Comments

1981 Amendment: Added the provision concerning ability to pay to (2)(e).

Part 5

Proceeding on Petition

41-5-501. Petition — form and content. A petition initiating proceedings under this chapter shall be signed by the county attorney and shall be entitled "In the Matter of ...., a youth" and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense, which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date, and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse of the youth and, if none of the parents, guardian, or spouse resides or can be found within the state or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in detention or shelter care and, if so, the place of detention or shelter care and the time he was detained or sheltered;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215.

41-5-502. Summons. (1) After a petition has been filed, summons shall be served directly to:

(a) the youth;

(b) his parent or parents having actual custody of the youth or his guardian or custodian, as the case may be; and

(c) such other persons as the court may direct.

(2) The summons shall:

(a) require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If any youth is in shelter care or detained under any provision of this chapter pending an adjudication, the court, upon petition of the youth, his parents or guardian, or his counsel, shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such detention or shelter care and the form the detention or shelter care should take. All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216.

41-5-503. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-502(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217.

41-5-504 through 41-5-510 reserved.

41-5-511. Right to counsel. In all proceedings following the filing of a petition alleging a delinquent youth or youth in need of supervision, the youth and the parents or guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth if the parents and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel after a petition has been filed if commitment to a state correctional facility or to the department of institutions for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "if the parents and the youth are unable to provide counsel" near the middle of the section.

41-5-512. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4).

41-5-513. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

(1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(2) confront and cross-examine witnesses testifying against the party; and

(3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5).

41-5-514. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c).

41-5-515. Persons to be advised of rights. Persons afforded rights under this chapter shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6).

41-5-516. Time limitations on petition hearing — continuance. (1) Unless the allegations of a petition alleging that a youth is a delinquent youth or a youth in need of supervision are determined by a written admission of the allegations by the youth, the petition shall be dismissed with prejudice if a hearing on the petition is not begun within 15 days after all service is completed. However, either party may move for a continuance under subsection (2) of this section if the youth is not in custody.

(2) The youth court may, upon motion of either party or upon the court's own motion, order a continuance if the youth is not in custody and interests of justice so require. All motions for a continuance are addressed to the discretion of the youth court judge and must be considered in the light of the diligence shown on the part of the movant.

(3) Delays resulting from service of process or delays resulting from legal actions taken in behalf of the youth shall not be included in the 15-day time limitation.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979.

41-5-517 through 41-5-520 reserved.

41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. In the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing shall be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981.

Compiler's Comments

1981 Amendment: In (5), substituted "when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601" for "except when the court determines a closed hearing to be in the youth's best interest".

41-5-522. Dispositional hearing. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of supervision, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of financial liability as provided in 41-5-805 and 41-5-806.

(2) Before conducting the dispositional hearing, the court shall direct that a social summary or predisposition report be made in writing by a probation officer concerning the youth, his family, his environment, and other matters relevant to the need for care or rehabilitation or disposition of the case. The youth court may have the youth examined, and the results of the examination shall be made available to the court as part of the social summary or predisposition report. The court may order the examination of a parent or guardian who gives his consent and whose ability to care for or supervise a youth is at issue before the court. The results of such examination shall be included in the social summary or predisposition report. The youth, his parents, guardian, or counsel shall have the right to subpoena all persons who have prepared any portion of the social summary or predisposition report and shall have the right to cross-examine said parties at the dispositional hearing.

(3) Defense counsel shall be furnished with a copy of the social summary or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing shall be conducted in the manner set forth in subsections (3), (4), and (5) of 41-5-521. The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth and the public. Such evidence shall include, but not be limited to, the social summary and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, his parents, or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

(6) In determining whether restitution, as authorized by 41-5-523(1)(f), is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

(a) age of the youth;
(b) ability of the youth to pay;
(c) ability of the parents or legal guardian to pay;
(d) amount of damage to the victim; and

(e) legal remedies of the victim, however the ability of the victim or his insurer to stand any loss may not be considered in any case.

History: **En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981.**

Compiler's Comments

1981 Amendment: Added the provision concerning ability to stand any loss to (6)(e).

41-5-523. Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court considers beneficial to the youth, consistent with subsection (1)(d) of this section;

(f) order restitution by the youth.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated by the department of institutions for a period not to exceed 45 days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth 16 years or older whom the court considers a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation the department of institutions reports to the court that such child is suitable for placement in a youth forest camp and if there is space available at a camp, the court may then commit such child directly to the youth forest camp under the terms of commitment of this chapter. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may consider advisable under the provisions of this chapter. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b).

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana)
) ss.
County of ....)

In the district court for the .... Judicial District.

On the .... day of ...., 19.., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that .... be committed to the department of institutions until .....

The names, addresses, and occupations of the parents are:

Name	Address	Occupation
....	....	....
....	....	....

The names and addresses of their nearest relatives are:

....

....

Witness my hand this .... day of ...., A.D. 19...

....
Judge

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979.

41-5-524. Consent decree with petition. (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted under this section shall conform to the procedures and dispositions specified in 41-5-401 through 41-5-403 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth or if the youth fails to fulfill the expressed terms and

conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report which shall be reviewed by the court.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224.

41-5-525 through 41-5-530 reserved.

41-5-531. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7).

41-5-532. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225.

41-5-533. Probation revocation — disposition. (1) A youth on probation incident to an adjudication that he is a delinquent youth or a youth in need of supervision and who violates a term of such probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation shall be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation shall be screened, reviewed, and prepared in the same manner and shall contain the same information as petitions alleging delinquency or need of supervision. Procedures of the Montana Youth Court Act regarding taking into custody and detention shall apply. The petition shall state the terms of probation alleged to have been violated and the factual basis for such allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult and the hearing shall be before the youth court without a jury. In all other respects proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of supervision. If a youth is found to have violated a term of his probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: **En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228.**

Part 6

Confidentiality of Proceedings — Records

41-5-601. Publicity. (1) No publicity shall be given to the identity of an arrested youth or to any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a delinquent youth or youth in need of supervision except as provided in subsection (2).

(2) When a petition is filed under this section, publicity may not be withheld as to the identity of any youth formally charged with or proceeded against or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult.

History: **En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "subsection (2)" for "41-5-521(5)" in (1); and added subsection (2).

41-5-602. Law enforcement records. (1) No law enforcement records concerning a youth, except traffic records, may be open to public inspection or their contents disclosed to the public unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court.

(2) Inspection of law enforcement records concerning a youth, which records are not open to public inspection under subsection (1), is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers of Montana, when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence investigation;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel.

History: **En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981.**

Compiler's Comments

1981 Amendment: In (1), substituted "unless the records are directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601 or unless inspection is ordered by the court" for "unless so ordered by the court"; and in (2), inserted "which records are not open to public inspection under subsection (1)" in the first sentence.

41-5-603. Youth court records. (1) Youth court records, including social, medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers, are open to inspection prior to the sealing of the records only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon such party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after he has been emancipated or reaches the age of majority.

(2) All or any part of records information secured from records listed in subsection (1) of this section, when presented to and used by the court in a proceeding under this chapter, shall also be made available to the counsel for the parties to the proceedings.

(3) All other court records, including docket, petitions, motions, and other papers filed in a case, transcripts of testimony, findings, verdicts, orders, and decrees, shall be open to inspection by those persons and agencies listed in subsection (1) of this section and the parties to the proceedings and their counsel.

(4) All information obtained in discharge of an official duty by any officer or other employee of the youth court shall be privileged and shall not be disclosed to anyone other than the judge and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.

(5) After youth court records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

(a) those persons and agencies listed in subsection (1); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979.

41-5-604. Disposition of records. (1) All court findings, orders, judgments, and the legal and social files and records of the court, probation services, and law enforcement agencies pertaining to a youth coming under this chapter shall be physically sealed when the youth reaches the age of 18 years.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any agency or department that has in its possession copies of the records so sealed shall also seal or destroy such copies of

records. Anyone violating the provisions of this subsection shall be subject to contempt of court.

(4) Nothing herein contained shall prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing. The records of youths who were 28 years old or older on July 1, 1974, may be destroyed with the consent of the youth court judge or county attorney.

(5) This section shall not apply to youth traffic records or to records directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or to records directly related to an offense to which publicity must be allowed under subsection (2) of 41-5-601" at the end of (5).

Part 7

Probation Officers

41-5-701. Appointment of probation officers. The youth court judge of each judicial district shall appoint such necessary probation officers as are required to carry out the purpose and intent of this chapter. He shall appoint such part-time probation officers as shall be required. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also insure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. No person while serving as a law enforcement officer may be appointed or perform the duties of a full-time or part-time probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979.

41-5-702. Qualifications of probation officers. (1) Any person appointed as a chief probation officer must have the following qualifications:

(a) a master's degree in the behavioral sciences;

(b) a bachelor's degree from an accredited college or university in the behavioral sciences and at least 1 year's experience in work of a nature related to the duties of a probation officer as set forth in 41-5-703; or

(c) a bachelor's degree in any field and at least 3 years' experience in work related to the duties of a probation officer as set forth in 41-5-703.

(2) The judge may appoint any reputable person as a probation officer who has had experience in work of a nature related to the duties of a chief probation officer, provided preference shall be given to persons with the qualifications set forth in subsection (1).

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2).

41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under his supervision;

(d) perform any other functions designated by the court.

(2) A probation officer shall have no power to make arrests or to perform any other law enforcement functions in carrying out his duties except that a probation officer may take into custody any youth who violates either his probation or a lawful order of the court.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5).

41-5-704. Salary and expenses. (1) A chief probation officer shall receive for his services a salary specified by the court depending on the formal training and experience of each respective officer, but such salary may be no lower than $17,000 a year and no higher than $22,000 a year. The court shall, on or before July 1, 1982, and on or before July 1 of each year thereafter, adjust and fix the salary of the chief probation officer for a cost-of-living increase by adding to his annual salary on July 1, 1981, an increment of 70% of the last previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana may in the future recognize as the successor to that index. The cost-of-living increment for the fiscal year beginning July 1, 1982, and for each subsequent fiscal year shall be added to all cost-of-living increments granted for previous years. The salary of such officer shall be apportioned among and paid by each of the counties in which such officer is appointed to act, in proportion to the assessed valuation of such counties for the same year, except where such officer is appointed for one county whereby such county shall pay the entire salary.

(2) For all authorized travel incident to his official duties in connection with the investigation, supervision, and transportation of youth, the probation officer shall, in addition to his office salary, be reimbursed as provided in 2-18-501 through 2-18-503.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981.

Compiler's Comments

1981 Amendment: Changed, in the first sentence of (1), the method of establishing the compensation of a chief probation officer from either a sum set by the court or a yearly salary set by the judge employing him of not less than $15,000 or more than $20,000 to a salary specified by the court of not less than $17,000 nor more than $22,000; and added the second and third sentences of (1).

41-5-705. Deputy probation officers — salary. The judge having jurisdiction of juvenile matters may also appoint such additional persons, giving preference to persons having the qualifications suggested for appointment as the chief probation officer, to serve as deputy probation officers as the judge deems necessary, their salaries to be fixed by the judge. Such salaries shall not exceed 90% or be less than 60% of the salary of the chief probation officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979.

Part 8

Custodial Care

41-5-801. Shelter care and foster homes. (1) The youth court may establish procedures for finding, maintaining, and administering shelter care and foster homes or other homes approved by the court for youth within the provisions of this chapter.

(2) Pursuant to 41-3-104, the department of social and rehabilitation services shall finance foster homes established by the youth court if:

(a) the foster home is licensed by the department;

(b) the youth court enters into an agreement according to federal regulations with the department for the placement of children;

(c) the placement of the child is reviewed as required by 41-5-807; and

(d) the youth court retains supervision of the child in placement.

(3) The licensed shelter care and foster homes established under this section shall be funded at a rate consistent with other shelter care and foster homes established for other purposes under law. Shelter care as defined by this chapter may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services.

History: En. 10-1236 by Sec. 36, Ch. 329, L. 1974; amd. Sec. 11, Ch. 100, L. 1977; amd. Sec. 12, Ch. 571, L. 1977; R.C.M. 1947, 10-1236; amd. Sec. 4, Ch. 297, L. 1981.

Compiler's Comments

1981 Amendment: Substituted subsection (2) for "All foster homes established by the youth court which are licensed by the department of social and rehabilitation services shall be financed by the department as set forth in 53-2-201(1)(b)."

Statement of Intent: The statement of intent attached to SB 228 (Ch. 297, L. 1981) provided: "A statement of intent is required for this bill because in addition to amending sections 41-3-104, 41-3-501, 41-5-801, and 53-4-112, the bill creates rulemaking authority for the Department of Social and Rehabilitation Services to administer a review of children in foster care under the department's supervision or for whom the department is making payment under section 41-3-104(2) or 41-5-801(2).

It is the intent of this bill to indicate the legislature's support of permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the numbers of children in foster care; to expediently return children to their natural homes when possible, or to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public funds and that the best interest of children in placement in Montana are being met by the department's program.

Rulemaking is primarily necessary to implement Section 2 [41-5-807] and subsection (3) of Section 1 of the bill [41-3-104]. These sections require that a foster care review committee be established by the court to conduct reviews of children in foster care and provide written reports to the youth court and the department. Rules would identify which children are to be reviewed, and would list precisely what information is to be shared with the review committee, when the committees are to conduct business, the general guidelines for the committees' operation, the time limitations for conducting the reviews, and who may participate in the review. As for the information to be reported, the rules will ask for:

(1) summary reports of the review to include the recommendations of the committee regarding the continuation or discontinuation of foster care and reasons; treatment needs of the child; and court action;

(2) sufficient information to allow the tracking of the reviews; to facilitate: follow-up services, compliance with court orders, agency decisions, and response to committee recommendations; and to provide necessary reports on the department's foster care program.

First adopted by the Senate Public Health, Welfare, and Safety Committee on February 9, 1981."

41-5-802. Shelter care and detention facilities. (1) (a) In all counties the county commissioners may provide, by purchase, lease, or otherwise, a place to be known as the youth detention facility, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths and youths in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases.

(b) The judge having jurisdiction may appoint such personnel as required, who shall have charge of said facility and of the youths detained therein.

(c) The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such facility shall be paid out of the county treasury which may be supplemented by state appropriation and federal funds.

(2) (a) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility.

(b) Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care.

(c) Such facility shall be separate and apart from any facility housing adults charged with criminal offenses.

(d) State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility.

(e) Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237.

41-5-803. Support of youth committed to a custodial agency. (1) When a youth under this chapter is committed by the court to custody other than that of his parents and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county or the appropriate division thereof.

(2) Whenever the provisions of 41-5-805 and 41-5-806 do not apply, the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct such sum as will cover, in whole or in part, the support of such youth. In determining the amount the parents must pay, the court shall use the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payment for care of residents of institutions as those provisions and rules apply to the youth and parents before the court. If such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence or said cost may be collected in a civil action against the parent or parents.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

41-5-804. Transfer of custody to private agency — reports. When the legal custody of a youth is vested in a public agency under the provisions of this chapter, the public agency may transfer physical custody of the youth to an appropriate private agency and may purchase care and treatment from the private agency if the private agency submits periodic reports to the public agency covering the care and treatment the youth is receiving and the youth's responses to that care and treatment. These reports shall be made as frequently as the public agency or the court deems necessary, but not less often than once each 6 months for each youth. The private agency shall also afford an opportunity for a representative of the public agency to examine or consult with the youth as frequently as the public agency deems necessary.

History: En. 10-1227 by Sec. 27, Ch. 329, L. 1974; R.C.M. 1947, 10-1227.

41-5-805. Financial investigation by county welfare department. (1) Whenever a disposition under 41-5-403, 41-5-523, or 41-5-524 involves placement in a foster home, child care agency, group home, or private treatment facility and the department of social and rehabilitation services is responsible for all or part of the cost of such placement, the probation officer or the court shall notify the department of social and rehabilitation services and order the county welfare department in the youth's county of residence to conduct an investigation of the financial status of the youth's parents or guardianship assets. Following an adjudicatory hearing in which a youth is determined to be a delinquent youth or a youth in need of supervision, the court may order the county welfare department to conduct a financial status investigation.

(2) Upon receipt of the order, the county welfare department shall make an investigation for the purpose of ascertaining the residence of the parents or guardian of the youth and the financial ability of the parents or the adequacy of the guardianship assets to pay the cost of supporting the youth in the foster home, child care agency, group home, or private treatment facility. A written report of the investigation shall be filed with the court having jurisdiction, the department of social and rehabilitation services, and the department of institutions, and a copy shall be sent to the parents or guardian of the youth or to any other party to the proceeding.

History: En. Sec. 11, Ch. 567, L. 1979.

41-5-806. Order for financial support. (1) Upon receipt of a financial status report pursuant to 41-5-805, a court providing for disposition of a youth under 41-5-523 or 41-5-524 shall hold a hearing to determine the ability of the youth's parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution. If feasible, this hearing may be held in conjunction with a dispositional hearing under 41-5-522. In cases involving informal adjustment under 41-5-403, the department may petition the district court having jurisdiction for a hearing to determine the financial ability of the parents to contribute to the support of the youth or the adequacy of the guardianship assets to provide a contribution.

(2) In addition to the report prepared under 41-5-805, any evidence concerning financial status may be introduced. In determining financial ability, the court shall consider the report and other evidence introduced at the hearing.

(3) If the court determines that the parents are able to contribute to the support of the youth or that the guardianship assets are adequate to provide

a contribution, the court shall issue an order directing the parents or guardian to make specified payments to the department of social and rehabilitation services to the extent considered appropriate under the circumstances. Payments required of a guardian may not exceed the funds available from guardianship assets. Upon a showing of change in financial ability, the order may be modified.

History: **En. Sec. 12, Ch. 567, L. 1979.**

41-5-807. Foster care review committee. (1) In every judicial district the youth court judge, in consultation with the department, shall appoint a foster care review committee. The members of the committee must be willing to act without compensation. The committee shall be composed of not less than four or more than seven members. The members shall include:

(a) a representative of the department;

(b) a representative of the youth court;

(c) someone knowledgeable in the needs of children in foster care placements who is not employed by the department or the youth court; and

(d) a representative of a local school district.

(2) When a child is in foster care under the supervision of the department or the youth court or if payment for care is made pursuant to 41-3-104 or 41-5-801(2), the committee shall conduct a review of the foster care status of the child. The review must be conducted within a time limit established by the department. The time limit must comply with federal law and may not be later than the 12-month anniversary date of the child's placement into foster care.

(3) The department shall provide the committee with guidelines for operation of the committee. Within 30 days of the foster care review, the committee shall provide the youth court and the department a written report of its findings and recommendations for further action by the youth court or the department.

(4) The department shall adopt rules necessary to carry out the purposes of this section.

(5) Because of the individual privacy involved, meetings of the committee, reports of the committee, and information on individuals' cases shared by committee members is confidential and subject to the confidentiality requirements of the department.

(6) The committee is subject to the call of the youth court judge to meet and confer with him on all matters pertaining to the foster care of a child before the youth court.

History: **En. Sec. 2, Ch. 297, L. 1981.**

Compiler's Comments

Statement of Intent: The statement of intent attached to SB 228 (Ch. 297, L. 1981) provided: "A statement of intent is required for this bill because in addition to amending sections 41-3-104, 41-3-501, 41-5-801, and 53-4-112, the bill creates rulemaking authority for the Department of Social and Rehabilitation Services to administer a review of children in foster care under the department's supervision or for whom the department is making payment under section 41-3-104(2) or 41-5-801(2).

It is the intent of this bill to indicate the legislature's support of permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the numbers of children in foster care; to expediently return children to their natural homes when possible, or to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public funds and that the best interest of children in placement in Montana are being met by the department's program.

Rulemaking is primarily necessary to implement Section 2 [41-5-807] and subsection (3) of Section 1 of the bill [41-3-104]. These sections require that a foster care review committee be established by the court to conduct reviews of children in foster care and provide written reports to the youth court and the department. Rules would identify which children are to be reviewed, and would list precisely what information is to be shared with the review committee, when the committees are to conduct business, the general guidelines for the committees' operation, the time limitations for conducting the reviews, and who may participate in the review. As for the information to be reported, the rules will ask for:

(1) summary reports of the review to include the recommendations of the committee regarding the continuation or discontinuation of foster care and reasons; treatment needs of the child; and court action;

(2) sufficient information to allow the tracking of the reviews; to facilitate: follow-up services, compliance with court orders, agency decisions, and response to committee recommendations; and to provide necessary reports on the department's foster care program.

First adopted by the Senate Public Health, Welfare, and Safety Committee on February 9, 1981."

Part 9

District Youth Guidance Homes

41-5-901. Establishment of district youth guidance home program. The legislature, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for custodial care in existing state youth correctional facilities, establishes by this part a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions.

History: **En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.**

41-5-902. Rules. The director of the department of institutions may adopt reasonable rules and standards to carry out the administration and purposes of this part.

History: **En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.**

41-5-903. Power of nonprofit corporations to establish homes — power to receive facilities and funds. In any judicial district nonprofit corporations or associations may be formed or organized for the purpose of establishing district youth guidance homes and to receive from the department of institutions and other governmental units such services, facilities, and funds as the department or other governmental units may be authorized by law to provide.

History: **En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.**

41-5-904 through 41-5-910 reserved.

41-5-911. Per diem charge to financially able parents. A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may require the parents or parent to pay to the district youth guidance home a per diem charge as the judge may determine under the standards set out in Title 53, chapter 1, part 4, and the department of institutions' rules governing payments for care of residents of institutions as those provisions and rules apply to the youth and parent or parents before the court.

History: En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. Governmental aid to nonprofit organizations. (1) The department of institutions shall be authorized to contract with nonprofit corporations or associations to provide facilities and services for delinquent youths and youths in need of supervision in district youth guidance homes and is authorized to expend such moneys as shall be appropriated or available therefor.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are hereby authorized, at their own expense, to provide funds, materials, facilities, and services for district youth guidance homes.

History: En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. Federal assistance. The department of institutions may make application for and receive federal-aid money or other assistance which might become available for programs in the nature of the one created by this part.

History: En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. Petition by person under twenty-one to be placed in district youth guidance home or any other court-approved home. Any person under the age of 18 years or any person between the ages of 18 and 21 years who is still within the jurisdiction of the youth court may petition the youth court of a district in which a district youth guidance home has been established to be placed in a district youth guidance home or in any other home approved by the court for any period of time up to said person's 21st birthday.

History: En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or in any other home approved by the court" following "placed in a district youth guidance home" near the end of the section.

41-5-922. Placement of youths by department of institutions. The department of institutions is hereby authorized as part of its aftercare program to place a delinquent youth or a youth in need of supervision in a district youth guidance home subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. Authority of youth court judge to commit delinquent youths and youths in need of supervision. A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision in a district youth guidance home for any period of time up to the child's 21st birthday subject to the approval of its sponsoring nonprofit corporation or association.

History: En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. Continuing jurisdiction of youth court over youths. The youth court placing a delinquent youth or a youth in need of supervision in a district youth guidance home shall retain continuing jurisdiction over the youth until the youth becomes 21 years of age or is otherwise discharged by order of the court.

History: En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

CHAPTER 6

INTERSTATE COMPACT ON JUVENILES

Part 1 — Text of Compact

Section

41-6-101. Enactment — provisions.
41-6-102. Juvenile compact administrator.
41-6-103. Supplementary agreements.
41-6-104. Financial arrangements.
41-6-105. Responsibilities of courts, state departments, agencies, and officers.
41-6-106. Additional procedures not precluded.

Part 1

Text of Compact

41-6-101. Enactment — provisions. The Interstate Compact on Juveniles as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I. Findings and Purposes

(1) Juveniles who are not under proper supervision and control or who have absconded, escaped, or run away are likely to endanger their own health, morals, and welfare and the health, morals, and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to:

(a) cooperative supervision of delinquent juveniles on probation or parole;

(b) the return, from one state to another, of delinquent juveniles who have escaped or absconded;

(c) the return, from one state to another, of nondelinquent juveniles who have run away from home; and

(d) additional measures for the protection of juveniles and of the public which any two or more of the party states may find desirable to undertake cooperatively.

(2) In carrying out the provisions of this compact the party states shall be guided by the noncriminal, reformative, and protective policies which guide their laws concerning delinquent, neglected, or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

Article II. Existing Rights and Remedies

All remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies, and procedures and shall not be in derogation of parental rights and responsibilities.

Article III. Definitions

For the purposes of this compact, "delinquent juvenile" means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of an agency or institution pursuant to an order of such court; "probation or parole" means any kind of conditional release of juveniles authorized under the laws of the states party hereto; "court" means any court having jurisdiction over delinquent, neglected, or dependent children; "state" means any state, territory, or possessions of the United States, the District of Columbia, and the commonwealth of Puerto Rico; and "residence" or any variant thereof means a place at which a home or regular place of abode is maintained.

Article IV. Return of Runaways

(1) The parent, guardian, person, or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person, or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as

may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing, that the juvenile should be returned, he shall present to the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person, or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected, or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person, or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person, or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge or any proceeding to have

him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense of juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a juvenile is returned under this article shall be responsible for payment of the transportation costs of such return.

(4) "Juvenile" as used in this article means any person who is a minor under the law of the state of residence of the parent, guardian, person, or agency entitled to the legal custody of such minor.

Article V. Return of Escapees and Absconders

(1) The appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile if known at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have

appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

(2) Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time not exceeding 90 days as will enable his detention under a detention order issued on a requisition pursuant to this article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

(3) The state to which a delinquent juvenile is returned under this article shall be responsible for payment of the transportation cost of such return.

Article VI. Voluntary Return Procedure

Any delinquent juvenile who has absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(1) and (2) or of Article V(1) and (2), may consent to his immediate return to the state from which he absconded, escaped, or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located, and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

Article VII. Cooperative Supervision of Probationers and Parolees

(1) The duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian, or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies, and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probationer or parolee in cases where the parent, guardian, or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted, the sending state may transfer supervision accordingly.

(2) Each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

(3) After consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention, or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

(4) The sending state shall be responsible under this article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

Article VIII. Responsibility for Costs

(1) The provisions of Articles IV(3), V(3), and VII(4) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of cost or responsibilities therefor.

(2) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(3), V(3), or VII(4) of this compact.

Article IX. Detention Practices

To every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail, or lockup or be detained or transported in association with criminal, vicious, or dissolute persons.

Article X. Supplementary Agreements

The duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment, and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment, and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall:

(1) provide the rates to be paid for the care, treatment, and custody of such delinquent juveniles, taking into consideration the character of facilities, services, and subsistence furnished;

(2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment, and custody;

(3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile;

(4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state;

(5) provide for reasonable inspection of such institutions by the sending state;

(6) provide that the consent of the parent, guardian, person, or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and

(7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

Article XI. Acceptance of Federal and Other Aid

Any state party to this compact may accept any and all donations, gifts, and grants of money, equipment, and services from the federal or any local government or any agency thereof and from any person, firm, or corporation for any of the purposes and functions of this compact and may receive and utilize the same subject to the terms, conditions, and regulations governing such donations, gifts, and grants.

Article XII. Compact Administrators

The governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms and provisions of this compact.

Article XIII. Execution of Compact

This compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form of execution to be in accordance with the laws of the executing state.

Article XIV. Renunciation

This compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements and shall not be subject to the 6 months' renunciation notice of the present article.

Article XV. Severability

The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 76, L. 1967; R.C.M. 1947, 10-1001.

41-6-102. Juvenile compact administrator. Pursuant to said compact, the governor is hereby authorized and empowered to designate an officer who shall be the compact administrator and who, acting jointly with like officers of other party states, shall promulgate rules to carry out more effectively the terms of the compact. Said compact administrator shall serve subject to the pleasure of the governor. The compact administrator is hereby authorized, empowered, and directed to cooperate with all departments, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or of any supplementary agreement or agreements entered into by this state thereunder.

History: En. Sec. 2, Ch. 76, L. 1967; R.C.M. 1947, 10-1002.

41-6-103. Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to the compact. In the event that such supplementary agreement shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, said supplementary agreement shall have no force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service.

History: En. Sec. 3, Ch. 76, L. 1967; R.C.M. 1947, 10-1003.

41-6-104. Financial arrangements. The compact administrator, subject to the approval of the department of administration, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder.

History: En. Sec. 4, Ch. 76, L. 1967; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 10-1004.

41-6-105. Responsibilities of courts, state departments, agencies, and officers. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions.

History: En. Sec. 5, Ch. 76, L. 1967; R.C.M. 1947, 10-1005.

41-6-106. Additional procedures not precluded. In addition to any procedure provided in Articles IV and VI of the compact for the return of any runaway juvenile, the particular states, the juvenile or his parents, the courts or other legal custodian involved may agree upon and adopt any other plan or procedure legally authorized under the laws of this state and the other respective party states for the return of any such runaway juvenile.

History: En. Sec. 6, Ch. 76, L. 1967; R.C.M. 1947, 10-1006.

TITLES 42 AND 43

RESERVED

TITLE 44

LAW ENFORCEMENT

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1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
Chapters 6 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.

CHAPTER 1

HIGHWAY PATROL

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44-1-103. Authority to make rules.
44-1-104. Duty to furnish governor with transportation.
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44-1-202. Qualifications.
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Part 1

General Provisions

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the division of motor vehicles, department of justice.

History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101.

44-1-102. General duties of division. The division shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-103. Authority to make rules. The division may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-104. Duty to furnish governor with transportation. The division shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part).

44-1-105. Division to furnish equipment. The division shall furnish patrolmen with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The division shall furnish all patrolmen with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part).

44-1-106. Authority of division to dispose of equipment. The division shall have authority to destroy, sell, or dispose of any and all obsolete equipment or uniforms or parts thereof, and any moneys received therefrom shall be paid into the state general fund.

History: En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part).

Part 2

Highway Patrol Chief

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3

Powers and Duties of Chief Relating to Patrolmen

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the attorney general.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979.

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrolmen;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrolman of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979.

Part 4

Appointment of Patrolmen

44-1-401. Qualifications of patrolmen. Patrolmen shall possess the following qualifications:

(1) sound and active physical and mental condition;
(2) good moral character;
(3) residency in Montana for at least 1 year immediately prior to appointment;
(4) having passed a satisfactory test in the operation of automobiles;
(5) citizenship in the United States and state of Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3).

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrolmen by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrolmen, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979.

44-1-403. Equal number of appointments from each highway district. Replacements and additions to the highway patrol force shall be chosen in equal numbers from the 12 highway districts. However, if sufficient qualified applications are not received from any one district, the division may, in its discretion, substitute other qualified applicants from any other districts.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b).

44-1-404. Status of replacements for patrolmen who enter the armed forces. Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979.

Part 5

Salaries of Patrolmen

44-1-501. Payment of salaries. All salaries of members of the highway patrol shall be paid out of the highway department's account in the earmarked revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979.

44-1-502. Payment of compensation for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrolman.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2).

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: En Sec. 1, Ch. 317, L. 1979.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: En Sec. 2, Ch. 317, L. 1979.

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: **En Sec. 3, Ch. 317, L. 1979.**

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: **En Sec. 4, Ch. 317, L. 1979.**

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: **En Sec. 5, Ch. 317, L. 1979.**

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: **En Sec. 6, Ch. 317, L. 1979.**

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: **En Sec. 7, Ch. 317, L. 1979.**

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the

department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana patrolmen's retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrolmen's retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979.

Part 6

Probationary Status and Tenure

44-1-601. Probationary training and service — patrolmen. A new patrolman shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrolman will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979.

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5).

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the division governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979.

Part 7

Disciplinary Action — Preliminary Procedure

44-1-701. Authority of division to suspend, demote, or reprimand. When the division has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge or his conduct has warranted reprimanding, it may suspend, demote, or reprimand the member.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a).

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the division.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c).

44-1-703. When charges dismissed. When charges are filed and the division believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959;

amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e).

44-1-704. When division to order hearing. When charges are filed and the division believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d).

44-1-705. Suspension pending hearing and decision. If the division orders a hearing, the chief may suspend such patrolman pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979.

Part 8

Disciplinary Action
Hearing and Decision

44-1-801. Notice of hearing. (1) The division shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrolman, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrolman is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrolman is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrolman is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979.

44-1-802. Authority of division — conduct of hearing. (1) The division shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The division shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959;

amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b).

44-1-803. Rights of accused. The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel at such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c).

44-1-804. Rendering and filing of decision. The division shall, within 15 days after such hearing, render its decision in writing and file same in its office, with the chief, and with the patrolman accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d).

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the division finds that the charge or charges made against the patrolman are not true, the division shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979.

44-1-806. Disciplinary action. If after a hearing the division finds that any charge or charges made against the patrolman are true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979.

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) Any patrolman who is suspended, demoted, or discharged has a right of appeal to the district court of Lewis and Clark County.

(2) The appeal must be made within 10 days after the decision or determination of the division.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979.

44-1-902. Action by court. The district court shall review such decision or determination in a summary manner and render its decision upon such appeal within 90 days from the filing of such appeal in said court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c).

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the division is finally reversed or modified by the district court, the accused patrolman must be reinstated in his position. Upon reinstatement, the division shall pay to the patrolman any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979.

Part 10

Jurisdiction of Patrolmen

44-1-1001. Offenses for which patrolmen may make arrests. (1) The highway patrol chief and all patrolmen may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrolman;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

(h) illegal transportation of narcotics; or

(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979.

44-1-1002. No authority in labor disputes. Such highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part).

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrolmen are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrolmen have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3).

44-1-1005. Enforcement of motor carriers law. A highway patrolman has the same authority to enforce provisions of the motor carriers law as that granted the public service commission under 69-12-203. The division shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979; amd. Sec. 1, Ch. 226, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "licensing" after "motor carriers".

Part 11

Procedure for Arrests

44-1-1101. Duty of patrolman upon making an arrest. Upon making an arrest, a patrolman shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979.

44-1-1102. Procedure when patrolman accepts bail. If the patrolman accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrolman shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrolman for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979.

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrolman or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1.

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Bureau of Criminal Investigation

Section
44-2-101. Bureau of criminal investigation created.
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44-2-112. Appointment of agents and assisting personnel.
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44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.
44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.
44-2-205. Withholding of salary of officer who fails to provide information.
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44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
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44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of moneys — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 1

Bureau of Criminal Investigation

44-2-101. Bureau of criminal investigation created. There is hereby created a permanent bureau of criminal investigation within the office of the attorney general, as provided for in 2-15-2003.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

44-2-102. Location of bureau. The location of the bureau of criminal investigation and its personnel shall be at the discretion of the attorney general.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 82-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971; R.C.M. 1947, 82-417.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed to the bureau of criminal investigation within the attorney general's office.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 82-415.

44-2-112. Appointment of agents and assisting personnel. The attorney general shall appoint agents and other necessary assisting personnel and fix their compensation.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent shall be a person qualified by experience, training, and high professional competence in criminal investigation. Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3).

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.

44-2-115. Powers and duties of agents. An agent shall:

(1) assist city, county, state, and federal law enforcement agencies at their request by providing expert and immediate aid in investigation and solution of felonies committed in the state;

(2) assist any law enforcement school held in the state for law enforcement officers when requested;

(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part).

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.
History: En. Sec. 34, Ch. 199, L. 1965; R.C.M. 1947, 80-2003.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.
History: En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.
History: En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.

Part 3

Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.
History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.
History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.

44-2-304. Report by attorney general. The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. He shall submit such report to the appropriations committee of every legislature at the time funds are requested for the administration of this part.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906.

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.

44-2-314. Use of moneys — records. The state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

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Division of Forensic Science

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Part 1

General Provisions
Division of Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: **En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.**

44-3-102. Purpose. The purposes of this chapter are to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers; and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: **En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428.**

44-3-103. Definition of division of forensic science. "Division" or "division of forensic science" means the division of forensic science in the department of justice, provided for in 2-15-2004.

History: **En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).**

44-3-104. Functions of division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

History: **En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430.**

44-3-105. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: **En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431.**

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ such personnel as may be necessary to conduct the affairs of the division of forensic science.

History: **En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part).**

Part 2

Medical Examiners

44-3-201. Definition of state medical examiner. "State medical examiner" means the state medical examiner provided for in 2-15-2004.

History: **En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).**

44-3-202. Removal of state medical examiner. The state medical examiner may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: **En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).**

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: **En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).**

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: **En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).**

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner — general. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology; and

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers.

History: **En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4).**

44-3-212. Duties of state medical examiner — appointments. The duties of the state medical examiner include but are not limited to the following:

(1) appointing the director of the laboratory of criminalistics;

(2) appointing one or more associate medical examiners who serve at his pleasure; and

(3) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

History: **En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).**

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: **En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.**

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: **En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.**

Part 3

Laboratory of Criminalistics

44-3-301. Purpose and functions of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2).

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the earmarked revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3).

44-3-303. Duties of laboratory director. The laboratory director shall:

(1) be responsible to the state medical examiner for supervision and direction of the laboratory.

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the division.

History: En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439.

44-3-304. Removal of laboratory director. The laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 2-18-1011 through 2-18-1013.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

Part 4

Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter.

History: En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441.

44-3-402. Disposition of property of deceased. Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

History: En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.

44-3-403. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

History: En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979.

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

Section

44-4-101. Position established.
44-4-102. Appointment.
44-4-103. Functions.

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44-4-201. Authorization to issue confidential plates and registrations.
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44-4-203. Registration records.
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44-4-205. Use of confidential plates and registrations.
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44-4-301. Functions.

Chapter Compiler's Comments

1981 Appropriations Act — Collections — General Fund: Section 19, HB 500 (1981), provided in part: "Any collections made by the county prosecutor services program or antitrust enforcement efforts shall be deposited to the general fund."

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established. There is created within the department of justice the position of training coordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979.

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys and other law enforcement personnel;

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979.

Part 2

Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations. The attorney general is authorized to issue to bona fide law enforcement agencies, except the highway patrol, within the state of Montana license plates and certificates of registration, which shall be exempt from all requirements for public disclosure. The issuance of such confidential registrations shall be subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part).

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).**

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).**

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations.

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3).**

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: **En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).**

Part 3

Board of Crime Control

44-4-301. Functions. As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards for employment of peace officers whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions, require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers, and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions of agencies, to insure the public health, welfare, and safety. The board may waive the minimum qualification standard for good cause shown.

History: **En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4).**

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

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44-5-103. Definitions.
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44-5-301. Dissemination of public criminal justice information.
44-5-302. Dissemination of criminal history record information that is not public criminal justice information.
44-5-303. Dissemination of confidential criminal justice information.
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Part 4 — System Security

44-5-401. Criminal justice information system security.
44-5-402. Automated equipment.
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44-5-404. Manual equipment.
44-5-405. Personnel.

Part 1

General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: **En. Sec. 1, Ch. 525, L. 1979.**

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in criminal justice information recordkeeping.

History: **En. Sec. 2, Ch. 525, L. 1979.**

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release,

posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the division of motor vehicles, department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any state or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information, except confidential criminal justice information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: **En. Sec. 3, Ch. 525, L. 1979.**

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: **En. Sec. 4, Ch. 525, L. 1979.**

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: **En. Sec. 23, Ch. 525, L. 1979.**

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: **En. Sec. 24, Ch. 525, L. 1979.**

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: **En. Sec. 22, Ch. 525, L. 1979.**

Part 2

Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: **En. Sec. 5, Ch. 525, L. 1979.**

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of institutions; and

(c) the department of justice.

(2) The department of institutions may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken:

(a) if a court so orders; or

(b) upon the request of the individual:

(i) if no charges were filed;

(ii) if a misdemeanor charge did not result in a conviction; or

(iii) if the individual was found innocent of the offense charged.

History: **En. Sec. 6, Ch. 525, L. 1979.**

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: **En. Sec. 7, Ch. 525, L. 1979.**

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: **En. Sec. 8, Ch. 525, L. 1979.**

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of institutions shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: **En. Sec. 9, Ch. 525, L. 1979.**

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information.

Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: **En. Sec. 19, Ch. 525, L. 1979.**

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: **En. Sec. 20, Ch. 525, L. 1979.**

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: En. Sec. 10, Ch. 525, L. 1979.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(1) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(2) a district court considers dissemination necessary;

(3) the information is disseminated in compliance with 44-5-304; or

(4) the agency receiving the information is authorized by law to receive it.

History: En. Sec. 11, Ch. 525, L. 1979.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies or to those authorized by law to receive it. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency.

The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: **En. Sec. 13, Ch. 525, L. 1979.**

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: **En. Sec. 21, Ch. 525, L. 1979.**

Part 4

System Security

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: **En. Sec. 14, Ch. 525, L. 1979.**

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 15, Ch. 525, L. 1979.**

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: En. Sec. 16, Ch. 525, L. 1979.

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: En. Sec. 17, Ch. 525, L. 1979.

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: **En. Sec. 18, Ch. 525, L. 1979.**

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

Section
44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.
44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.
44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: **En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.**

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers with a means of securing additional training in the field of law enforcement.

History: **En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202.**

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy to be located at one of the units of the

Montana university system, which unit shall be selected in the manner hereinafter provided.

History: **En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).**

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: **En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.**

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) choose a site for the Montana law enforcement academy at the unit of the university system of Montana which in the determination of the department is best suited for the needs of the academy;

(2) establish qualifications for admission to the academy;

(3) select from among the qualified applicants those officers who are to attend the academy each year;

(4) determine the curriculum and methods of training for the officers attending the academy;

(5) select and hire such staff as it deems necessary to implement this chapter;

(6) establish rules for the conduct of the officers at the academy;

(7) award appropriate certificates to the officers who successfully complete their training, which certificates shall be signed by the president of the selected university unit;

(8) provide for the keeping of permanent records of enrollment, attendance, and graduation and such other records as the department may deem necessary;

(9) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(10) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(11) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: **En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206.**

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: **En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).**

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers shall be eligible to apply for admission to this academy.

History: En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204.

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.

CHAPTER 11

MUTUAL ASSISTANCE RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

Section
44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: **En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.**

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: **En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.**

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: **En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.**

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

Section
44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Notice of seizure and intention to institute forfeiture proceedings.
44-12-202. Answer to allegations concerning use of property.

44-12-203. Procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: En. Sec. 1, Ch. 529, L. 1979.

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 250 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels:

(i) which are used or intended for use in unlawfully transporting or in any manner facilitating the transportation of anything enumerated in subsection (1)(a) or (1)(b) for the purpose of sale or receipt of such thing;

(ii) in which a controlled substance is unlawfully kept, deposited, or concealed; or

(iii) in which a controlled substance is unlawfully possessed by an occupant;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9; and

(f) all drug paraphernalia as defined in 45-10-101.

(2) (a) No conveyance used by a person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) No conveyance is subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 250 grams of marijuana.

History: En. Sec. 2, Ch. 529, L. 1979; amd. Sec. 8, Ch. 481, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (1)(f).

Severability: Section 10, Ch. 481, L. 1981, was a severability section.

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the sheriff of the county in which the seizure is made, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1.

History: En. Sec. 3, Ch. 529, L. 1979; amd. Sec. 9, Ch. 481, L. 1981.

Compiler's Comments

1981 Amendment: Added "or in violation of Title 45, chapter 10, part 1" to (2)(d).

Severability: Section 10, Ch. 481, L. 1981, was a severability section.

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: En. Sec. 4, Ch. 529, L. 1979.

Part 2

Procedure

44-12-201. Notice of seizure and intention to institute forfeiture proceedings. A peace officer or an officer of the seizing agency who seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a notice of the seizure and intention to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs, and the clerk shall serve notice thereof on all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose right, title, or interest is of record in the division of motor vehicles, by mailing a copy of the notice by certified or registered mail to the address on the records of the division;

(2) upon an owner or claimant whose name and address are known, by mailing a copy of the notice by certified or registered mail to his last-known address;

(3) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county.

History: En. Sec. 5, Ch. 529, L. 1979.

44-12-202. Answer to allegations concerning use of property. Within 20 days after the mailing or publication of the notice, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property contained in the notice of seizure and intention to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 6, Ch. 529, L. 1979.

44-12-203. Procedure following answer or expiration of time for answering. (1) If a verified answer to the notice is not filed within 20 days after the mailing or publication of the notice, the court shall hear evidence on the charge of unlawful use of the property and upon motion may order the property forfeited to the state.

(2) If a verified answer is filed within 20 days, the forfeiture proceedings shall be set for hearing without a jury not less than 30 days after the answer is filed. Notice of the hearing shall be given in the manner provided for service of notice of seizure.

History: En. Sec. 7, Ch. 529, L. 1979.

44-12-204. Proof required or permitted at hearing. (1) At the hearing any owner or claimant who has a verified answer on file may show by competent evidence that the property was not used for the purpose charged.

(2) A claimant of a security interest in the property may prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: En. Sec. 8, Ch. 529, L. 1979.

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property must be sold at public auction by the sheriff of the county in which the seizure was made in the same manner provided by law for the sale of property under execution or the state may return the property to the holder of the security interest without proceeding with an auction.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

History: En. Sec. 9, Ch. 529, L. 1979.

44-12-206. Disposition of proceeds of sale. Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(1) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(2) the remainder, if any, to the county treasurer of the county in which the property was seized, for deposit in the county general fund, except as provided in subsection (3);

(3) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer for deposit in the city or town general fund.

History: **En. Sec. 10, Ch. 529, L. 1979.**

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.
10. Model Drug Paraphernalia Act.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

Section
45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
Sections 45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(6) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106; amd. Sec. 4, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (4).

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Part 1 — Definitions and State of Mind

Section

45-2-101. General definitions.
45-2-102. Substitutes for negligence and knowledge.
45-2-103. General requirements of criminal act and mental state.
45-2-104. Absolute liability.

Part 2 — Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result.
45-2-202. Voluntary act.
45-2-203. Responsibility — intoxicated or drugged condition.
Sections 45-2-204 through 45-2-210 reserved.
45-2-211. Consent as a defense.
45-2-212. Compulsion.
45-2-213. Entrapment.

Part 3 — Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another.
45-2-302. When accountability exists.
45-2-303. Separate conviction of person accountable.
Sections 45-2-304 through 45-2-310 reserved.
45-2-311. Criminal responsibility of corporations.
45-2-312. Accountability for conduct of corporation.

Part 1

Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the

protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine or human readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) "Statute" means any act of the legislature of this state.

(65) "Stolen property" means property over which control has been obtained by theft.

(66) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(69) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979; amd. Sec. 1, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsections (8) through (13); substituted "any tangible or intangible thing" for "anything" in (54); inserted subsection (54)(k); inserted subsection (69)(a)(iii); corrected internal references changed due to added subsections.

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

45-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (33), (37), and (58) of 45-2-101. The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(2) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979; amd. Sec. 5, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal references to subsections in 45-2-101 to reflect amendment of that section in (1).

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104; amd. Sec. 6, Ch. 485, L. 1981.

Compiler's Comments

1981 Amendment: Changed internal references to subsections in 45-2-101 to reflect amendment of that section.

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102.

45-2-203. Responsibility — intoxicated or drugged condition. A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition is involuntarily produced and deprives him of his capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. An intoxicated or drugged condition may be taken into consideration in determining the existence of a mental state which is an element of the offense.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: **En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.**

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: **En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.**

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: **En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.**

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: **En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.**

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112.

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

Section

45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.
45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
Sections 45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

45-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: **En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.**

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: **En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.**

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: **En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.**

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: **En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.**

45-3-109. Execution of death sentence. A public servant who in the exercise of his official duty puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: **En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109.**

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: **En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.**

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

Section
45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: **En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.**

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;

(b) has been convicted of a different offense;

(c) is not amenable to justice;

(d) has been acquitted; or

(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: **En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.**

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose,

he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

Section
45-5-101. Criminal homicide.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.
45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
45-5-503. Sexual intercourse without consent.
45-5-504. Indecent exposure.
45-5-505. Deviate sexual conduct.
45-5-506. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

45-5-601. Prostitution.
45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
Sections 45-5-605 through 45-5-610 reserved.
45-5-611. Bigamy.
45-5-612. Marrying a bigamist.
45-5-613. Incest.
Sections 45-5-614 through 45-5-620 reserved.
45-5-621. Nonsupport.
45-5-622. Endangering the welfare of children.
45-5-623. Unlawful transactions with children.

45-5-624. Unlawful possession of an intoxicating substance by children.
45-5-625. Sexual abuse of children.

Part 1

Homicide

45-5-101. Criminal homicide. (1) A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.

(2) Criminal homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

45-5-102. Deliberate homicide. (1) Except as provided in 45-5-103(1), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979.

45-5-103. Mitigated deliberate homicide. (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

45-5-104. Negligent homicide. (1) Criminal homicide constitutes negligent homicide when it is committed negligently.

(2) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another;

(b) bodily injury to another with a weapon;

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981.

Compiler's Comments

1981 Amendments and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following

the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Chapter 289 added "or a person who is responsible for the care or custody of a prisoner" to (1)(d).

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of an offense;

(e) expose any person to hatred, contempt, or ridicule; or

(f) take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental

adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

History: **En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

History: **En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment

for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Part 4

Robbery

45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

Part 5

Sexual Crimes

45-5-501. Definition. As used in 45-5-503 and 45-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:
(a) mentally defective or incapacitated;
(b) physically helpless; or
(c) less than 16 years old.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501.

45-5-502. Sexual assault. (1) A person who knowingly subjects another not his spouse to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person of the opposite sex not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) evidence of the victim's past sexual conduct with the offender;

(b) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in subsection (5)(a) or (5)(b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (5).

(7) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment and Codification of Related Sections: Subsections (1) and (2) of sec. 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section."

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) A person convicted of the offense of indecent exposure shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person convicted of deviate sexual conduct without consent shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-506. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979.

Part 6

Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part); amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201,

45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.

45-5-613. Incest. (1) A person commits the offense of incest if he knowingly marries or cohabits or has sexual intercourse with an ancestor, a descendant, a brother or sister of the whole or half blood. The relationships referred to herein include blood relationships without regard to legitimacy and relationships of parent and child by adoption.

(2) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment

for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-614 through 45-5-620 reserved.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 16 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) A parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than 16 years old by:

(a) supplying or encouraging the use of intoxicating substances by the child; or

(b) assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian;

(ii) enter a place of prostitution; or

(iii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607.

45-5-623. Unlawful transactions with children. (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978.

45-5-624. Unlawful possession of an intoxicating substance by children. (1) A person under the age of 18 years commits the offense of possession of an intoxicating substance if he knowingly has in his possession an intoxicating substance other than an alcoholic beverage. A person under the age of 19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he does not commit the offense when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall be fined not to exceed $50 or be imprisoned in the county jail for any term not to exceed 10 days, or both. If proceedings are held in the youth court, the preceding penalty does not apply, and the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103(13). In such case, the youth court may enter its judgment under 41-5-523.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978.

45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

History: En. Sec. 1, Ch. 505, L. 1979.

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

Section
45-6-101. Criminal mischief.
45-6-102. Negligent arson.
45-6-103. Arson.

Part 2 — Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully".
45-6-202. Criminal trespass to vehicles.
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Part 3 — Theft and Related Offenses

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Part 1

Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal

mischief and causes pecuniary loss in excess of $150, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 560, L. 1981.

Compiler's Comments

1981 Amendments: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Chapter 560 inserted subsection (2).

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner.

(2) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

45-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit a felony therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Part 3

Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance, as defined in 53-3-101, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person convicted of the offense of theft of property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $150 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(6) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Cross-References

Unlawful transportation of trees, 76-13-601.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

45-6-304. Effect of possession of stolen property. Possession of stolen property shall not constitute proof of the commission of the offense of theft. Such fact shall place a burden on the possessor to remove the effect of such fact as a circumstance to be considered with all other evidence pointing to his guilt.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender

reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305.

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding $150 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 239, L. 1981 (SB 83), read: "An act to establish the criminal offense of failure to return rented or leased personal property; establishing a penalty therefor; and providing an immediate effective date."

Effective Date: Section 2, Ch. 239, L. 1981, provided: "This act is effective on passage and approval." Approved April 2, 1981.

45-6-310. Definition — computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

History: En. Sec. 2, Ch. 485, L. 1981.

Compiler's Comments

Codification Instruction: Section 9, Ch. 485, L. 1981, provided: "Sections 2 and 3 are intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to sections 2 and 3."

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $150 in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 3, Ch. 485, L. 1981.

Compiler's Comments

Codification Instruction: Section 9, Ch. 485, L. 1981, provided: "Sections 2 and 3 are intended to be codified as an integral part of Title 45, chapter 6, part 3, and the provisions of Title 45 apply to sections 2 and 3."

Effective Date: Section 10, Ch. 485, L. 1981, provided: "This act is effective on passage and approval." Approved April 21, 1981.

45-6-312 through 45-6-314 reserved.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when, with the purpose of obtaining control over property or to secure property, labor, or services of another, he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6

months, or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $150, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be

obtained exceeds $150, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $150, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment

for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

Section
45-7-101. Bribery in official and political matters.
45-7-102. Threats and other improper influence in official and political matters.
45-7-103. Compensation for past official behavior.
45-7-104. Gifts to public servants by persons subject to their jurisdiction.

Part 2 — Perjury and Other Falsification in Official Matters

45-7-201. Perjury.
45-7-202. False swearing.
45-7-203. Unsworn falsification to authorities.
45-7-204. False alarms to agencies of public safety.
45-7-205. False reports to law enforcement authorities.
45-7-206. Tampering with witnesses and informants.
45-7-207. Tampering with or fabricating physical evidence.
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45-7-209. Impersonating a public servant.
45-7-210. False claims to public agencies.

Part 3 — Obstructing Governmental Operations

45-7-301. Resisting arrest.
45-7-302. Obstructing a peace officer or other public servant.
45-7-303. Obstructing justice.
45-7-304. Failure to aid a peace officer.
45-7-305. Compounding a felony.
45-7-306. Escape.
45-7-307. Transferring illegal articles or unauthorized communication.
45-7-308. Bail-jumping.
45-7-309. Criminal contempt.

Part 4 — Official Misconduct

45-7-401. Official misconduct.

Part 1

Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the

declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.**

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.**

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: **En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.**

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-7-209. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210.

45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $150, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 1, Ch. 151, L. 1981.

Compiler's Comments

Codification Instruction: Subsection (1) of sec. 3, Ch. 151, L. 1981, provided: "(1) Section 1 is intended to be codified as an integral part of Title 45, chapter 7, part 2, and the provisions of Title 45, chapter 7, part 2, apply to section 1."

Cross-References

Civil penalty for filing false claim, 17-8-231.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.

45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, supervision while under a supervised release program, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from a state prison, county jail, city jail, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) escapes from a state prison, county jail, city jail, halfway house, life skills center, or supervised release program; or

(ii) escapes from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306; amd. Sec. 1, Ch. 72, L. 1981; amd. Sec. 8, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendments — Composite: Chapter 72 inserted "halfway house, life skills center, or furlough placement" in (3)(b)(i).

Chapter 583 added "supervision while under a supervised release program" to the list of methods of constraint that mean "official detention" in (1); and added "supervised release program" to (3)(a) and (3)(b)(i).

In preparing the composite of the Ch. 72 and Ch. 583 amendments to this section, the Code Commissioner chose the term "supervised release program" over "furlough placement" in (3)(b)(i) in order to conform to the intent of Ch. 583, which redefined the prisoner furlough program as the supervised release program.

Severability: Section 12, Ch. 583, L. 1981, was a severability section.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

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Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.

(2) A person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) A person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) A person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-8-107 through 45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less

a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981.

Compiler's Comments

1981 Amendment: Inserted subsection (4).

Source: Subsection (4) is based upon Georgia Code Annotated sec. 72-108.

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in (2)(a)(i), (ii), or (iii) of this section in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of this section and 45-8-202.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978.

45-8-202. Public display of offensive material. (1) A person is guilty of public display of offensive sexual material when:

(a) with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee, or similar place any pictorial, three-dimensional, or other visual representation of a person or a portion of the human body that predominantly appeals to prurient interest in sex, is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors; and

(b) he does not:

(i) separate that material by an opaque structure from other materials displayed; and

(ii) establish by official identification that each person viewing the displayed material is at least 18 years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual or offensive violent material and if minors are permitted to attend the showing of the motion picture then being featured.

(3) A drive-in movie screen may not display any material prohibited by subsection (1) in such manner that the display is easily visible from any public street, sidewalk, thoroughfare, or transportation facility.

(4) A person convicted of the public display of offensive sexual material or convicted of otherwise violating this section shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) For purposes of this section, "offensive violent material" means material which is so violent as to be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-202 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3.

45-8-204. Sale and advertisement of contraceptive drugs and devices. (1) It is unlawful for any person, firm, corporation, partnership, or association to sell, offer for sale, or give away, by means of vending machines, personal or collective distribution, solicitation, or peddling or in any other manner whatsoever, contraceptive drugs or devices, prophylactic rubber goods, or other articles for the prevention of venereal diseases. This subsection does not apply to regularly licensed practitioners of medicine or osteopathy, other licensed persons practicing other healing arts, registered pharmacists, or wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It is unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place other than in the place of business of a licensed pharmacist;

(b) advertise such in any magazine, newspaper, or other form of publication originating in or published within the state of Montana;

(c) publish or distribute from house to house or upon the streets any circular, booklet, or other form of advertising of prophylactics or contraceptives; or

(d) advertise such by other visual means, auditory method, or radio broadcast or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways.

(3) Nothing in this section prevents the advertising of prophylactics or contraceptives in the trade press, those magazines whose principal circulation is to the medical and pharmaceutical professions, or those magazines and other publications having interstate circulation or originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

(4) Nothing in this section prevents the furnishing within the store or place of business of a licensed pharmacist to persons qualified to purchase, and then only upon their inquiry, such printed or other information as is requisite to proper use in relation to any merchandise coming within the provisions of this section.

(5) Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this section.

(6) Any officer of the law may cause the arrest of a person violating any provision of this section, seize stocks illegally held, and seize any mechanical device or vending machine containing any merchandise coming within the provisions of this section, holding the owner of the machine and the occupier and owner of the premises where seizure is made to be in violation of this section.

(7) Any person, any member of a firm or partnership, or the officers of a corporation or association who knowingly violate any of the provisions of this section are guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed $500 or by imprisonment not to exceed 6 months in the county jail, or both.

(8) Justice of the peace courts and the district courts of the state have concurrent jurisdiction in all prosecutions and causes arising under this section.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

45-8-205 through 45-8-210 reserved.

45-8-211. Cruelty to animals. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying any animal in a cruel manner;

(c) failing to provide an animal in his custody with proper food, drink, or shelter;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in a horse race of more than 2 miles or promoting, sponsoring, conducting, or participating in any fight between any animals.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Part 3

Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

45-8-310 through 45-8-314 reserved.

45-8-315. Definition. "Concealed weapon" shall mean any weapon mentioned in 45-8-316 through 45-8-319 which shall be wholly or partially covered by the clothing or wearing apparel of the person so carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: **En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.**

45-8-317. Exceptions. Section 45-8-316 does not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a person authorized by a judge of a district court of this state to carry a weapon; or

(7) the carrying of arms on one's own premises or at one's home or place of business.

History: **En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212.**

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison who, while at such state prison, while being conveyed to or from the Montana state prison, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison officials, officers, or employees, possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from said prison, or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

History: **En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment

for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-8-319. Permits to carry concealed weapons — records — revocation. (1) Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding 1 year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. No charge may be made for the filing of the petition.

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for 6 months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. The record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the name of the judge granting the permission, and the name of the person, if any, by whom good moral character and peaceable disposition are proved. The record must be signed by the person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of .....

Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

......
Clerk"

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke

the same. The date of the revocation shall be noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted before March 3, 1919, are hereby revoked.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

History: En. Sec. 8, Ch. 74, L. 1919; re-en. Sec. 11309, R.C.M. 1921; re-en. Sec. 11309, R.C.M. 1935; Sec. 94-3532, R.C.M. 1947; redes. 94-8-217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-217.

45-8-321 through 45-8-330 reserved.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 ½ inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in 50-38-101.

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.

45-8-338 through 45-8-340 reserved.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: **En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.**

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.

History: **En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218; amd. Sec. 1, Ch. 20, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "Except as provided in subsections (2) and (3)" in (1); and added subsections (2) and (3).

Effective Date: Section 2, Ch. 20, L. 1981, provided: "This act is effective on passage and approval." Approved February 26, 1981.

45-8-344. Use of firearms by children under fourteen prohibited. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms of any description loaded with powder and lead, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian.

History: **En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221.**

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: **En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.**

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

Section

45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.

45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.

Part 2 — Procedural Provisions

45-9-201. Jurisdiction.
45-9-202. Alternative sentencing authority.

Part 1

Offenses Involving Dangerous Drugs

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 5 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Whenever a conviction under this subsection is for criminal sale of such a drug to a minor, the sentence shall include the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendments and Codification of Related Sections: Section 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following

the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

Chapter 583 substituted "supervised release program" for "prisoner furlough program" near the end of (3).

Severability: Section 12, Ch. 583, L. 1981, was a severability section.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) Any person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2) or (3) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(6) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendments and Codification of Related Sections: Section 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter

18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses 1 kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981.

Compiler's Comments

1981 Amendments and Codification of Related Sections: Section 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall

be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years.

History: En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "fraudulently obtaining dangerous drugs or" before "altering labels" in (1); added subsection (2).

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) both phenyl-2-propanone (phenylacetone) and formamide or hydroxylamine at the same time with the intent to manufacture amphetamine;

(b) both phenyl-2-propanone (phenylacetone) and methylamine or N-methylformamide at the same time with the intent to manufacture methamphetamine;

(c) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: **En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacists to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacists shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: **En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "board of pharmacists" for "board of pharmacy" in (2).

Statement of Intent: The statement of intent adopted with Ch. 291, L. 1979, provided: "A statement of intent is required for this bill in that in section 3 it delegates authority to the Board of Pharmacy to adopt rules.

House Bill 422 defines the offense of criminal possession of precursors to certain dangerous drugs. The bill provides that its provisions do not apply to those persons or businesses which have a legitimate reason for possessing the precursors. It is possible that certain persons, businesses or research facilities may now or at a later date have a legitimate need for these precursors. The purpose for giving rulemaking authority to the Board of Pharmacy is that it can best determine whether a person, business or research facility has a legitimate need for the precursors. It will also alleviate having to amend the statute in future sessions if it appears that someone is entitled to be exempted from the criminal provisions of the statute."

Part 2

Procedural Provisions

45-9-201. Jurisdiction. The district court has exclusive trial jurisdiction over all prosecutions commenced under this chapter.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137.

CHAPTER 10

MODEL DRUG PARAPHERNALIA ACT

Part 1 — General Provisions

Section
45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.
45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.

Part 1

General Provisions

Part Compiler's Comments

1981 Title: The title to Ch. 481, L. 1981 (HB 300), read: "An act to enact the provisions of the Model Drug Paraphernalia Act; providing for a definition of drug paraphernalia; providing penalties for its sale, possession, or advertisement; and providing for forfeiture; amending sections 44-12-102 and 44-12-103, MCA."

Source: This part is based on the Model Drug Paraphernalia Act promulgated by the Drug Enforcement Administration of the United States Department of Justice.

Severability: Section 10, Ch. 481, L. 1981, was a severability section.

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: **En. Sec. 1, Ch. 481, L. 1981.**

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: **En. Sec. 2, Ch. 481, L. 1981.**

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 3, Ch. 481, L. 1981.**

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 4, Ch. 481, L. 1981.**

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: **En. Sec. 5, Ch. 481, L. 1981.**

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: **En. Sec. 6, Ch. 481, L. 1981.**

45-10-107. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this part.

History: **En. Sec. 7, Ch. 481, L. 1981.**

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
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12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial in District Court.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
Chapters 24 through 29 reserved.
30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

Section
46-1-101. Application.
46-1-102. Purpose and construction.

Part 2 — Definitions

46-1-201. Definitions.

Part 3 — Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.
46-1-302. Notice of appeal to be served on attorney general.

Part 1

Purpose and Application of Title

46-1-101. Application. This title shall govern the procedure in all the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Purpose and construction. These provisions are intended to provide for the just determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

Part 2

Definitions

46-1-201. Definitions. For the purposes of this title, the words and phrases described in this section have the meanings designated in this section, except when a particular context clearly requires a different meaning:

(1) "Charge" means a written statement presented to a court accusing a person of the commission of an offense and includes complaint, information, and indictment.

(2) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(3) "Court" means a place where justice is judicially administered and includes a judge thereof.

(4) "Judge" means a person who is invested by law with the power to perform judicial functions and includes court, justice of the peace, or city magistrate when a particular context so requires.

(5) "Judgment" means an adjudication by the court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(6) "Magistrate" is an officer having power to issue a warrant for the arrest of a person charged with an offense and includes:

(a) the justices of the supreme court;
(b) the judges of the district courts;
(c) justices of the peace;
(d) city magistrates in towns or cities.

(7) "Offense" means a violation of any penal statute of this state or of any ordinance of its political subdivisions.

(8) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(9) "Sentence" is the punishment imposed on the defendant by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

Part 3

Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: **En. Sec. 1, Ch. 91, L. 1979.**

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: **En. Sec. 2, Ch. 91, L. 1979.**

CHAPTER 2

JURISDICTION

Part 1 — Jurisdiction of the State

Section
46-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court.
46-2-202. Jurisdiction of justices' courts.
46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1

Jurisdiction of the State

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs

within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: **En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.**

Part 2

Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: **En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.**

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: **En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.**

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: **En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).**

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: **En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).**

CHAPTER 3

VENUE

Part 1 — General Provisions

Section

46-3-101. Place of trial — change of venue.
46-3-102. When offense committed partly in one and partly in another county.
46-3-103. When offense committed on or near county boundary.
46-3-104. When a person commits or aids and abets an offense in another county.
46-3-105. Offenses committed while in transit.
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Part 2 — Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places.
46-3-202. Stolen property.
46-3-203. Escape from prison.
46-3-204. Bigamy.
46-3-205. Kidnapping.
46-3-206. Treason.

Part 1

General Provisions

46-3-101. Place of trial — change of venue. (1) In all criminal prosecutions the trial shall be in the county where the offense was committed unless otherwise provided by law.

(2) All objections to improper place of trial are waived by a defendant unless made before trial. If an objection is made, a hearing shall be held and the venue established before proceeding to trial.

History: En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401.

46-3-102. When offense committed partly in one and partly in another county. When two or more acts are requisite to the commission of any offense or when two or more acts or offenses are committed in furtherance of a common scheme, the trial may be in any county in which any of such acts or offenses occur.

History: En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402; amd. Sec. 1, Ch. 468, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "When" for "Where" at the beginning of the section; inserted "or when two or more acts or offenses are committed in furtherance of a common scheme" after "any offense"; and inserted "or offenses" after "acts" at the end of the section.

46-3-103. When offense committed on or near county boundary. Where an offense is committed on or within one-half mile of the boundary of two or more counties and it cannot be readily determined in which county the offense was committed, the offender may be tried in any of such counties.

History: En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.

46-3-104. When a person commits or aids and abets an offense in another county. Where a person in one county commits, aids, abets, or procures the commission of an offense in another county, the offender may be tried in either county.

History: En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404.

46-3-105. Offenses committed while in transit. If an offense is committed in, on, or against any instrument of conveyance passing within this state and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405.

46-3-106. Offense commenced outside the state. If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407.

Part 2

Venue for Certain Specific Crimes

46-3-201. Death and cause of death in different places. If cause of death is inflicted in one county and the death ensues in another county, the offender may be tried in either county.

History: En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

46-3-202. Stolen property. When a person obtains property by theft, robbery, or deceptive practices, he may be tried in any county in which he exerted control over such property.

History: En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.

46-3-203. Escape from prison. A person who escapes from prison may be tried in any county in the state.

History: En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.

46-3-204. Bigamy. A person who commits the offense of bigamy may be tried in any county where the bigamous marriage or bigamous cohabitation has occurred.

History: En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.

46-3-205. Kidnapping. A person who commits the offense of kidnapping may be tried in any county in which his victim has traveled or has been confined during the course of the offense.

History: En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.

46-3-206. Treason. A person who commits the offense of treason may be tried in any county.

History: En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.

CHAPTER 4

INVESTIGATIVE PROCEDURES

Part 1 — Investigation of Death—Autopsy

Section

46-4-101. Jurisdiction — death and cause of death in different counties.
46-4-102. Investigation of suspicious deaths.
46-4-103. Autopsy — when conducted, record, scope.
46-4-104. Liability of a mortuary or physician.

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46-4-201. Inquest — definition, when held, how conducted.
46-4-202. Summoning and swearing in of jurors.
46-4-203. Subpoenaing of witnesses.
46-4-204. Witness compelled to attend.
46-4-205. Verdict of jury — form.
46-4-206. Recording and filing of testimony and proceedings.
46-4-207. Coroner's register.

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46-4-304. Conduct of investigative inquiry.
46-4-305. Self-incrimination and immunity.
46-4-306. Applicability of other laws — costs.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. When death occurs as a direct result of acts or events which occurred in another county, the coroner of either county shall have jurisdiction. If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812.

46-4-102. Investigation of suspicious deaths. (1) Whenever a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof.

(2) It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred.

(3) In cases where criminal conduct is suspected, the coroner shall notify the state medical examiner and one or more law enforcement agencies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

46-4-103. Autopsy — when conducted, record, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney.

(3) The right to conduct an autopsy shall include the right to retain such specimens as the medical examiner performing the autopsy deems necessary.

(4) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner.

History: **En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802.**

46-4-104. Liability of a mortuary or physician. No person or firm owning a mortuary or any person employed in such a mortuary shall be liable for the acts of the coroner performed in the removal of any body to a mortuary or during the course of an autopsy on such body. No criminal or civil action shall arise against a licensed physician for performing an autopsy authorized by this chapter.

History: **En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813.**

Part 2

Inquests

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, when the death of any person occurs in a jail or penal institution or from the use of a firearm by a peace officer, except where criminal charges have been or will be filed, the county attorney shall direct the coroner to hold an inquest.

(3) If an inquest is held, the proceedings shall be public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. Such inquest is to be held in accordance with this part.

History: **Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809.**

46-4-202. Summoning and swearing in of jurors. (1) For holding such inquest, the coroner must summon a jury of not more than nine persons qualified by law to serve as jurors.

(2) When six or more of the jurors attend, they must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict thereon, according to the evidence offered to them or arising from the inspection of the body.

History: **(1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804.**

46-4-203. Subpoenaing of witnesses. A coroner may issue subpoenas for witnesses, returnable immediately or at such time and place as he may designate, which may be served by any competent person. He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death.

History: **En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979.**

46-4-204. Witness compelled to attend. A witness served with a subpoena may be compelled to attend and testify or be punished as upon a subpoena issued by a justice of the peace.

History: **En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806.**

46-4-205. Verdict of jury — form. After inspecting the body and hearing the testimony, the jury must render its verdict, which shall be by majority vote, and certify the same in writing signed by them and setting forth who the deceased person is, when, where, and by what means he came to his death, and if he was killed or his death occasioned by the act of another by criminal means, who committed the act.

History: **En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807.**

46-4-206. Recording and filing of testimony and proceedings. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition in the office of the clerk of the district court of the county. The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer. Such recording and transcribing expenses shall be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: **En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808.**

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: **En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.**

Part 3

Investigative Subpoenas

46-4-301. Issuance of subpoena. Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

History: **En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1).**

46-4-302. Penalty for failure to obey. A person who, without just cause, fails to obey a subpoena served on him pursuant to this part is punishable for contempt of court.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2).

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3).

46-4-304. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this part. Testimony shall be recorded. The witness has the right to have counsel present at all times. If he does not have funds to obtain counsel, the judge or justice shall appoint counsel for him.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721.

46-4-305. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from prosecution or punishment for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena. After being granted such immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722.

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part shall be the same as required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-111 through 46-15-114.

History: En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

Section

46-5-101. Searches and seizures — when authorized.
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Part 1

Legality and Admissibility

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and instruments, articles, or things may be seized in accordance with the provisions of this chapter when the search is made:

(1) as an incident to a lawful arrest;

(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon

reasonable cause to be in such lawful possession by the person making the search;

(3) by the authority of a valid search warrant;

(4) under the authority and within the scope of a right of lawful inspection granted by law.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. No search and seizure, whether with or without warrant, shall be held to be illegal as to a defendant if:

(1) the defendant has disclaimed any right to or interest in the place or object searched or the instruments, articles, or things seized;

(2) no right of the defendant has been infringed by the search and seizure; or

(3) any irregularities in the proceedings do not affect the substantial rights of the accused.

History: En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717.

46-5-104. Admissibility in other proceedings. Instruments, articles, or things lawfully seized are admissible as evidence upon any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.

Part 2

Search Warrants

46-5-201. Search warrant defined. A "search warrant" is an order:

(1) in writing;

(2) in the name of the state;

(3) signed by a judge;

(4) particularly describing the thing, place, or person to be searched and the instruments, articles, or things to be seized;

(5) directed to a peace officer commanding him to search for personal property and bring it before the judge.

History: En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.

46-5-202. Grounds for search warrant. (1) Any judge may issue a search warrant upon the written or telephonic application of any person, made under oath or affirmation before the judge, which:

(a) states that an offense has been committed;

(b) states facts sufficient to show probable cause for issuance of the warrant;

(c) particularly describes the place, things, or persons to be searched; and

(d) particularly describes the things to be seized.

(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979.

46-5-203. What may be seized with warrant. A search warrant may authorize the seizure of the following:

(1) contraband;

(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense;

(3) any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705.

46-5-204. Filing of application. The application on which the warrant is issued shall be retained by the judge but need not be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been executed or has been returned "not executed".

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706.

46-5-205. Who may serve warrant. A search warrant may in all cases be served by any of the officers mentioned in its direction but by no other person except in aid of the officer on his requiring it, he being present and acting in its execution.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707.

46-5-206. Service and execution of warrant. Service of a search warrant is made by exhibiting the original warrant at the place to be searched. If the warrant is executed, a duplicate copy and a receipt for all articles taken shall be left with any person from whom any instruments, articles, or things are seized or, if no person is available, the copy and receipt shall be left at the place from which the instruments, articles, or things were seized. Failure to give or leave such a receipt shall not render the evidence inadmissible in a trial.

History: En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708.

46-5-207. When warrant may be executed. (1) The warrant may be executed at any time of any day or night.

(2) The warrant shall be executed within 10 days from the time of issuance. Any warrant not executed within such time shall be void and shall be returned to the court or the judge issuing the same as "not executed".

History: En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711.

46-5-208. Use of force in execution. All necessary and reasonable force may be used to execute a search warrant or to effect an entry into any building or property or part thereof to execute a search warrant.

History: En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709.

46-5-209. Detention and search of persons on premises. In the execution of the warrant the person executing the same may reasonably detain and search any person in the place at the time:

(1) to protect himself from attack; or

(2) to prevent the disposal or concealment of any instruments, articles, or things particularly described in the warrant.

History: En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return to court of things seized under search warrant. The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge and shall be accompanied by a written inventory of any property taken, verified by the person executing the warrant. The judge shall, upon request, deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

History: En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712.

46-5-302. Custody and disposition of things seized under search warrant. The judge before whom the instruments, articles, or things are returned shall enter an order providing for their custody or appropriate disposition pending further proceedings.

History: **En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.**

46-5-303. Custody and disposition of things seized without search warrant. (1) Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken, but failure to give such a receipt shall not render the evidence seized inadmissible upon a trial.

(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken.

History: **En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714.**

46-5-304. Return of property seized. (1) Any person claiming the right to possession of property seized as evidence may apply to the judge to whom it has been delivered for its return. The judge shall give such notice as he deems adequate to the county attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership.

(2) If the right to possession is proved to the judge's satisfaction, he shall order the property other than contraband returned if:

(a) the property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or

(b) all proceedings in which it might be required have been completed.

History: **En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715.**

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized and if after proper inquiry the judge cannot ascertain or locate any person entitled to its possession, he must order the property to be sold by the sheriff. The proceeds from the sale, after deduction of the costs of storage, preservation of the property, and the sale, must be paid into the county treasury.

History: **En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979.**

Part 4

Stop and Frisk

46-5-401. Stop and frisk — when authorized. (1) A peace officer may stop any person he observes in circumstances that give him reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:

(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) he has reasonable cause to suspect the person committed the felony; and

(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity.

History: **En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3).**

46-5-402. Stop and frisk — procedure. (1) A peace officer who has lawfully stopped a person under this part may:

(a) frisk the person and take other reasonably necessary steps for protection if he has reasonable cause to suspect that the person is armed and presently dangerous to him or another person present; and

(b) take possession of any object that he discovers during the course of the frisk if he has probable cause to believe the object is a deadly weapon.

(2) A peace officer who has lawfully stopped a person under this part may demand of the person his name and his present or last address.

(3) A peace officer who has lawfully stopped a person under this part shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person.

History: **En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7).**

Part 5

Roadblocks

46-5-501. Definition of temporary roadblock. For the purpose of this part, a "temporary roadblock" means any structure, device, or means used by the duly elected or appointed law enforcement officers of this state and their deputies for the purpose of controlling all traffic through a point on the highway whereby all vehicles may be slowed or stopped.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

46-5-502. Authority to establish roadblocks. The duly elected or appointed law enforcement officers of this state and their deputies are hereby authorized to establish, in their respective jurisdictions or in other jurisdictions within the state, temporary roadblocks on the highways of this state for the purpose of identifying drivers, checking for driver's licenses, and apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b).

46-5-503. Minimum requirements. For the purpose of warning and protecting the traveling public, the minimum requirements to be met by such officers establishing temporary roadblocks, if time and circumstances allow, are:

(1) the temporary roadblock must be established at a point on the highway clearly visible at a distance of not less than 100 yards in either direction;

(2) at the point of the temporary roadblock, a sign shall be placed on the center line of the highway displaying the word "stop" in letters of sufficient size and luminosity to be readable at a distance of not less than 50 yards in both directions either in daytime or darkness;

(3) at the same point of the temporary roadblock, at least one red light, which shall be a flashing or intermittent beam of light, must be placed at the side of the roadway clearly visible to the oncoming traffic at a distance of not less than 100 yards;

(4) at a distance of not less than 200 yards from the point of the temporary roadblock, warning signs must be placed at the side of the highway containing any wording of sufficient size and luminosity to warn the oncoming traffic that a "police stop" lies ahead. A burning beam light, flare, or a lantern must be placed near such signs for the purpose of attracting the attention of approaching drivers during hours of darkness. A red flag may be used for the same purpose during daylight hours.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).

46-5-504. Existing law preserved. Nothing in this part shall be deemed to limit or encroach upon the existing authority of Montana law enforcement officers in the performance of their duties involving traffic control.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).

46-5-505. Penalty. Any person who shall proceed or travel through a roadblock without subjecting himself to the traffic control so established shall be guilty of a misdemeanor and shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 6 months or by both fine and imprisonment.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).

CHAPTER 6

ARREST

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Part 1

General Provisions

46-6-101. Definitions. (1) An "arrest" is taking a person into custody in the manner authorized by law.

(2) A "warrant of arrest" is a written order from a court directed to a peace officer or to some other person specifically named commanding him to arrest a person. This term includes the original warrant of arrest or a copy certified by the issuing court.

(3) A "summons" is a written order issued by the court which commands a person to appear before a court at a stated time and place.

(4) A "notice to appear" is a written direction issued by a peace officer that a person appear before a court at a stated time and place to answer an offense set forth therein.

History: En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.

46-6-103. Magistrate may order arrest. A magistrate may orally order a peace officer or private person to arrest anyone committing or attempting to commit a public offense in the presence of such magistrate.

History: En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by his submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested shall not be subject to any greater restraint than is necessary to hold or detain him.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602.

46-6-105. Time of making arrest. An arrest may be made on any day and at any time of the day or night, except that a person cannot be arrested in his home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a magistrate endorsed upon a warrant of arrest.

History: En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607.

46-6-106. Manner of arrest without a warrant. A peace officer or person making an arrest without a warrant must inform the person to be arrested of his authority, if any, of the intention to arrest him, and the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission or after an escape or when the giving of such information will imperil the arrest.

History: **En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606.**

Part 2

Arrest Warrants

46-6-201. Issuance of arrest warrant upon complaint. (1) A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county attorney, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: **En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3).**

46-6-202. Form of warrant — execution. (1) A warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if the judge is absent or unable to act, before the nearest or most accessible court in the same county or the adjoining county;

(d) specify the name of the person to be arrested or, if his name is unknown, designate the person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office.

(2) The warrant of arrest may specify the amount of bail.

(3) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by 7-32-4301 and 7-32-4302.

(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary

delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6).

46-6-203. Manner of arrest with a warrant. When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, of the intention to arrest him, of the cause of the arrest, and of the fact that a warrant has been issued for his arrest, except when he flees or forcibly resists before the peace officer has an opportunity to so inform him or when the giving of such information will imperil the arrest. The peace officer need not have the warrant in his possession at the time of the arrest, but after the arrest the warrant must be shown to the person arrested as soon as practicable if such person so requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

Part 3

Summons

46-6-301. When summons may be issued — service. (1) When authorized to issue a warrant of arrest, a court may in lieu thereof issue a summons.

(2) The summons may be personally served in the same manner as the summons in a civil action.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).

46-6-302. Form of summons. The summons shall:

(1) be in writing in the name of the state of Montana;

(2) state the name of the person summoned and his address, if known;

(3) set forth the nature of the offense;

(4) state the date when issued and the municipality or county where issued;

(5) be signed by the judge of the court with the title of his office; and

(6) command the person to appear before a court at a certain time and place.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b).

46-6-303. When warrant issued after summons. Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest. If after issuing a summons the magistrate becomes satisfied that the person summoned will not appear as commanded by the summons, he may at once issue a warrant of arrest.

History: En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613.

46-6-304. Summons to a corporation. (1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action.

(3) If after being summoned the corporation does not appear, a plea of not guilty shall be entered by the court having jurisdiction to try the offense for which the summons was issued and such court shall proceed to trial and judgment without further process.

History: En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615.

Part 4

Arrest by a Peace Officer

46-6-401. Circumstances in which a peace officer may make an arrest. A peace officer may arrest a person when:

(1) he has a warrant commanding that such person be arrested;

(2) he believes on reasonable grounds that a warrant for the person's arrest has been issued in this state;

(3) he believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction; or

(4) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest.

History: En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608.

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer shall have the same authority to arrest as that officer.

(3) A person commanded to aid a peace officer in making an arrest shall not be civilly liable for any reasonable conduct in aid of the officer.

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609.

46-6-403. Release by officer of person arrested. A peace officer having custody of a person arrested without a warrant is authorized to release the person without requiring him to appear before a court when the officer is satisfied that there are no grounds for criminal complaint against the person arrested.

History: En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610.

46-6-404. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

(2) The notice shall:

(a) be in writing;

(b) state the name of the person and his address, if known;
(c) set forth the nature of the offense;
(d) be signed by the officer issuing the notice; and
(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or warrant of arrest may issue.

History: En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614.

46-6-405 through 46-6-410 reserved.

46-6-411. Close pursuit — arrest by officers of another state — procedure. (1) Any peace officer of another state of the United States who enters this state in close pursuit and continues within this state in such close pursuit of a person in order to arrest him shall have the same authority to arrest and hold in custody such person as peace officers of this state have to arrest and hold in custody a person on the ground that he has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state in accordance with the provisions of subsection (1), he shall without unnecessary delay take the person arrested before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not of determining the guilt or innocence of the arrested person. If the judge determines that the arrest was in accordance with such provisions, he shall commit the person arrested to the custody of the officer making the arrest, who shall without unnecessary delay take him to the state from which he fled. If the judge determines that the arrest was unlawful, he shall discharge the person arrested.

(3) Subsection (1) shall not be construed so as to make unlawful any arrest in this state which would otherwise be lawful.

(4) For the purpose of this section, the word "state" shall include the District of Columbia.

(5) This section may be cited as the "Uniform Act on Close Pursuit".

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part).

Part 5

Arrest by a Private Person

46-6-501. Definitions. As used in this part, the following definitions apply:

(1) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise. The following acts or deceptive conduct shall be prima facie evidence of concealment:

(a) concealing merchandise upon the person or in a container or otherwise removing such merchandise from full view while upon the premises;

(b) removing, changing, or altering any price tag;

(c) transferring or moving any merchandise upon the premises to obtain a lower price than the merchandise was offered for sale by the merchant; or

(d) abandoning or disposing of any merchandise in such a manner that the merchant will be deprived of all or part of the value of the merchandise;

(2) "Shoplifting" means the theft of any goods offered for sale by a wholesale or retail store or other mercantile establishment.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

46-6-502. When arrest by private person authorized. A private person may arrest another when:

(1) he believes on reasonable grounds that an offense is being committed or attempted in his presence;

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-503. Restrictions on arrest by merchant — liability. (1) A merchant acting under 46-6-502 may stop and temporarily detain the suspected shoplifter. The merchant in such event:

(a) shall promptly inform the person that the stop is for investigation of shoplifting and that upon completion of the investigation the person will be released or turned over to the custody of a peace officer;

(b) may demand of the person his name and his present or last address and may question the person in a reasonable manner for the purpose of ascertaining whether or not such person is guilty of shoplifting;

(c) may take into possession any merchandise for which the purchase price has not been paid and which is in the possession of the person or has been concealed from full view; and

(d) may place the person under arrest or request the person to remain on the premises until a peace officer arrives.

(2) Any stop, detention, questioning, or recovery of merchandise under 46-6-502(3) and this section shall be done in a reasonable manner and time. Unless evidence of concealment is obvious and apparent to the merchant, 46-6-502 and this section shall not authorize a search of the detained person other than a search of his coat or other outer garments and any package, briefcase, or other container, unless the search is done by a peace officer under proper legal authority. After the purpose of a stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person to go unless the person is arrested and turned over to the custody of a police officer.

(3) Such stop and temporary detention, with or without questioning or removal of merchandise, when done by a merchant in compliance with the law, shall not constitute an unlawful arrest or search. A merchant stopping, detaining, or arresting a person on the belief that such person is shoplifting is not liable for damages to such person unless the merchant acts with malice, either actual or implied, or contrary to the provisions of this law.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-504. Concealment not proof of theft. Concealment of merchandise shall not constitute proof of the commission of the offense of theft.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

Section

46-7-101. Bringing arrested person before a court.
46-7-102. Duty of the court at initial appearance.
46-7-103. Preliminary hearing in justice's court.

Part 1

General Provisions

46-7-101. Bringing arrested person before a court. (1) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901.

46-7-102. Duty of the court at initial appearance. (1) The judge shall inform the defendant:

(a) of the charge against him;

(b) of his right to counsel;

(c) of his right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) that he is not required to make a statement and that any statement made by him may be offered in evidence at his trial.

(2) The judge shall admit the defendant to bail in accordance with the provisions of this title.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

46-7-103. Preliminary hearing in justice's court. After the initial appearance a justice's court shall, within a reasonable time, hold a preliminary examination unless the defendant waives a preliminary examination, the district court has granted leave to file an information, an indictment has been returned, or the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part).

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right — Indigency Repayment of Costs

Section

46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.
Sections 46-8-105 through 46-8-110 reserved.
46-8-111. Eligibility for court-appointed counsel.
46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel.
46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence.
46-8-114. Time and method of payment of costs.
46-8-115. Effect of nonpayment of costs.

Part 2 — Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.

Chapter Compiler's Comments

Interim Study of Justice System: SJR 2 (1981) requested an interim study of the Montana criminal justice system, including alternative ways and effects of redistricting Montana's district court system, establishing a statewide district attorney system for criminal prosecutions, and providing for a statewide system of representation for indigents accused of crimes and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Judiciary to conduct the study.

Part 1

Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding and must be asked if he desires the aid of counsel.

(2) The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111. If the offense charged is a felony and if the defendant desires counsel and is unable to employ counsel, a court must assign counsel to defend him.

(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice may assign counsel to defend him.

History: **En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001; amd. Sec. 1, Ch. 415, L. 1981.**

Compiler's Comments

1981 Amendment: Deleted "of record" after "court" in the second sentence of (2) and in the first sentence of (3); added "as determined under the provisions of 46-8-111" at the end of the first sentence of (2).

46-8-102. Waiver of counsel. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501.

History: **En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979.**

46-8-103. Duration of appointment. Where counsel has been assigned, such assignment shall be effective until final judgment, including any proceeding upon direct appeal, unless relieved by order of the court.

History: **En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003.**

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: **En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.**

46-8-105 through 46-8-110 reserved.

46-8-111. Eligibility for court-appointed counsel. (1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

History: **En. Sec. 2, Ch. 415, L. 1981.**

Compiler's Comments

Codification Instruction: Section 8, Ch. 415, L. 1981, provided: "Sections 2 through 6 are intended to be codified as an integral part of Title 46, chapter 8, and the provisions of Title 46, chapter 8, apply to sections 2 through 6."

Source: Sections 46-8-111 through 46-8-115 are based in part on Oregon Revised Statutes 135.050.

46-8-112. Informing defendant regarding false swearing of oath on financial statement — repayment of costs of counsel. The court shall inform the defendant that:

(1) if he makes a false statement under oath regarding his financial inability to obtain counsel, he may be charged with the additional offense of false swearing;

(2) he may be required to pay all or a portion of the compensation and expenses incurred by his court-appointed counsel as a part of or a condition under his sentence should he be convicted of an offense.

History: **En. Sec. 3, Ch. 415, L. 1981.**

46-8-113. Payment of costs of court-appointed counsel by defendant — condition of sentence. (1) Under the provisions of 46-18-201, the court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under his sentence.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding. Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is not in contumacious default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: **En. Sec. 4, Ch. 415, L. 1981.**

46-8-114. Time and method of payment of costs. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Such payments shall be made to the clerk of the district court. The clerk of the district court shall disburse the payments to the county or state agency responsible for the expenses of court-appointed counsel as provided for in 46-8-201.

History: **En. Sec. 5, Ch. 415, L. 1981.**

46-8-115. Effect of nonpayment of costs. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment thereof or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why his default should not be treated as contempt of court and may issue a show cause citation or a warrant of arrest for his appearance.

(2) Unless the defendant shows that his default was not attributable to an intentional refusal to obey the order of the court or to a failure on his part to make a good faith effort to make the payment, the court may find that his default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel shall be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment or the unpaid portion thereof in whole or in part.

(5) A default in the payment of costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; and

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice, the expense must be borne by the state agency causing the arrest.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at county expense.

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006.

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

Section

46-9-101. Definition and purpose.
46-9-102. Bailable offenses.
46-9-103. Bail after conviction.
46-9-104. Bail on a new trial.
Sections 46-9-105 through 46-9-110 reserved.
46-9-111. Release on own recognizance.

Part 2 — Bail—General Procedural Provisions

46-9-201. Who may admit to bail.
46-9-202. Giving bail before another court or judge.
46-9-203. Report to county attorney concerning drug users.
46-9-204. Discharge of defendant.
46-9-205. Surrender of defendant.

Part 3 — The Amount of Bail

46-9-301. Determining the amount of bail.
46-9-302. Bail schedule for minor offenses — acceptance by peace officer.
46-9-303. Bail set in warrant — acceptance by peace officer.
Sections 46-9-304 through 46-9-310 reserved.
46-9-311. Reduction, increase, revocation, or substitution of bail.

Part 4 — Furnishing Bail

46-9-401. How bail furnished.
46-9-402. Persons prohibited from furnishing bail security.
46-9-403. Qualifying property as bail.
46-9-404. Justifying the bail.
Sections 46-9-405 through 46-9-410 reserved.
46-9-411. Definition of guaranteed arrest bond certificate.
46-9-412. Sureties for guaranteed arrest bond certificates.
46-9-413. Certification of sureties to courts — withdrawal as surety.
46-9-414. Motor vehicle violations — certificates accepted in lieu of cash.

Part 5 — Conditions of Bail—Violation Thereof

46-9-501. Form of conditions of bail.
46-9-502. Conditions performed — bail discharged.
46-9-503. Conditions not performed — forfeiture.
46-9-504. Procedure on forfeiture.
46-9-505. Issuance of arrest warrant — redetermining bail.

Part 1

Definition and Availability of Bail

46-9-101. Definition and purpose. "Bail" is the security given for the purpose of insuring the presence of the defendant in a pending criminal proceeding.

History: **En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101.**

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

46-9-103. Bail after conviction. (1) After conviction of an offense not punishable by death, a defendant who intends to appeal may be admitted to bail:

(a) as a matter of right, from a judgment imposing a fine only or any judgment rendered by a justice's or city court;

(b) as a matter of discretion in all other cases.

(2) A defendant convicted of the offense of deliberate homicide is presumed to be a danger to others and not entitled to be admitted to bail, which presumption is rebuttable.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979.

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.

History: En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.

46-9-105 through 46-9-110 reserved.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

History: En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. Any judge may admit any defendant properly appearing before him in such proceeding to bail. When bound over to any court or judge having jurisdiction of the offense charged, bail shall be continued provided the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, any judge before whom the trial was had or any judge having the power to issue a writ of habeas corpus may admit the defendant to bail.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a).

46-9-202. Giving bail before another court or judge. The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending.

History: En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105.

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.

46-9-204. Discharge of defendant. Upon allowance and acceptance of bail the defendant, if he is in custody, must be discharged.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).

46-9-205. Surrender of defendant. (1) (a) At any time before the forfeiture of bail, the defendant may surrender himself to the officer to whose custody he was committed at the time of giving bail.

(b) At any time before the forfeiture of bail, the sureties or surety company may surrender the defendant to the officer to whose custody he was committed and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so.

(2) The officer must detain the defendant in his custody as upon commitment and shall file a certificate in the court having jurisdiction of the defendant acknowledging the surrender. Such court may then order the bail exonerated.

History: En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115.

Part 3

The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to assure compliance with the conditions set forth in the bail;

(2) not oppressive;

(3) commensurate with the nature of the offense charged;

(4) considerate of the financial ability of the accused;

(5) considerate of the defendant's prior record, employment status, and family background.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110.

46-9-302. Bail schedule for minor offenses — acceptance by peace officer. (1) A justice of the peace or city judge may, in his discretion, establish and post a schedule of cash bail for offenses not amounting to a felony.

(2) A peace officer may accept bail in behalf of the justice of the peace or city judge in accordance with the schedule. In the event the peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103.

46-9-303. Bail set in warrant — acceptance by peace officer. A peace officer may accept cash bail in behalf of a judge whenever the warrant of arrest specifies the amount of bail. Whenever a peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or city judge before whom the offender is to appear, and the justice of the peace or city judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. How bail furnished. Bail may be furnished by the defendant in any of the following ways:

(1) by a deposit with the clerk of the court of an amount equal to the required bail of cash, stocks, or bonds or any combination thereof approved by the judge;

(2) by real estate situated in this state with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail;

(3) by written undertaking executed by the defendant and by two sufficient sureties; or

(4) by a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of such surety company.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

46-9-403. Qualifying property as bail. (1) If the bail is stock or bonds or both, the accused or sureties shall file a sworn schedule which must contain a list of the stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks and bonds listed.

(2) (a) If the bail is real estate, the accused or sureties shall file a sworn schedule which must contain a legal description of the real estate, a description of any and all encumbrances on the real estate including the amount of each and the holder thereof, and the market value of the unencumbered equity owned by the affiant.

(b) A certified copy of the schedule of real estate must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated, and the state has a lien on such real estate from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the bail is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or magistrate on taking bail may allow more than two sureties to justify severally in amounts less than that expressed in the undertaking if the whole justification is equivalent to that of sufficient bail.

(4) If the bail is a commercial surety bond, it may be executed by any domestic or foreign surety company which is qualified to transact surety business in this state.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979.

46-9-404. Justifying the bail. The sureties must in all cases justify by sworn affidavit that they each possess the qualifications provided in 46-9-403. The court may further examine the sufficiency of the bail, upon oath, in such manner as it may deem proper. In all cases the state may challenge the bail or the sufficiency of the sureties.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Definition of guaranteed arrest bond certificate. The term "guaranteed arrest bond certificate" means any printed card or other certificate which:

(1) is issued by an automobile club or association or insurance company to any of its members or insureds; and

(2) is signed by the member or insured and contains a printed statement that the automobile club, automobile association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana:

(a) guarantee the appearance of the person whose signature appears on the card or certificate; and

(b) will, in the event of the failure of the person to appear in court at the time of trial, pay any fine or forfeiture imposed on the person in an amount not exceeding $100.

History: **En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3).**

46-9-412. Sureties for guaranteed arrest bond certificates. (1) A domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not exceeding $100 with respect to any guaranteed arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking thus to become surety.

(2) The undertaking shall be in a form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $100 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

History: **En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2).**

46-9-413. Certification of sureties to courts — withdrawal as surety. (1) The commissioner of insurance shall certify to each justice of the peace, city magistrate, and district judge the names of surety companies which have become sureties with respect to guaranteed arrest bond certificates and shall likewise immediately notify such official upon the withdrawal of such company as surety.

(2) No such withdrawal by any company shall be effective for 30 days after the filing thereof with the state insurance commissioner.

History: **En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.**

46-9-414. Motor vehicle violations — certificates accepted in lieu of cash. A guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412 shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not exceeding $100 as a bail bond to guarantee the appearance of the person in any court, including municipal courts, in this state at such time as may be required by the court when the person was arrested for violation of a motor vehicle law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122.

Part 5

Conditions of Bail — Violation Thereof

46-9-501. Form of conditions of bail. (1) If a person is admitted to bail before conviction, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave; and

(b) any other conditions that the court may reasonably prescribe to assure his appearance when required.

(2) If the defendant is admitted to bail after conviction, the conditions of bail shall be that:

(a) he will duly prosecute his appeal;

(b) he will appear at such time and place as the court may direct;

(c) he will not depart from this state without leave of the court; and

(d) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118.

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Conditions not performed — forfeiture. (1) If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited.

(2) If such forfeiture is declared by a district court, notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address.

(3) If at any time within 30 days after the forfeiture the defendant or his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion, may direct the forfeiture of the bail to be discharged upon such terms as may be just.

(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c).

46-9-504. Procedure on forfeiture. (1) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(2) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(3) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

History: En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117.

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(2) On verified application by the state setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107.

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

Section

46-10-101. Definition of preliminary examination.
46-10-102. Waiver of preliminary examination.

Part 2 — Procedure at Preliminary Examination

46-10-201. When examination not public.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of examination.

Part 1

General Provisions

46-10-101. Definition of preliminary examination. A "preliminary examination" is a hearing before a justice of the peace for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

46-10-102. Waiver of preliminary examination. If the defendant waives the preliminary examination, the justice shall hold him to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979.

Part 2

Procedure at Preliminary Examination

46-10-201. When examination not public. The justice may, in his discretion, and must upon the request of the defendant exclude from the preliminary examination every person not officially associated with the case before the court.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The justice shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf.

(2) During the examination of any witness or when the defendant is making a statement or testifying, the justice may, and on the request of the defendant or state shall, exclude all other witnesses. He may also cause the

witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979.

46-10-203. Disposition of defendant. If from the evidence it appears that there is probable cause to believe that an offense has been committed by the defendant, the justice shall hold him to answer to the court having jurisdiction of the offense; otherwise, the justice shall discharge him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979.

46-10-204. Record of examination. (1) The testimony of each witness, in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the justice holds the defendant to answer, he shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by him.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979.

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

Section

46-11-101. Methods of commencing prosecution.
46-11-102. When given methods required.

Part 2 — Filing of Information

46-11-201. Leave to file information.
46-11-202. Leave to file information — when defendant is district judge.
46-11-203. Time for filing information.
46-11-204. Procedure when county attorney decides not to file.

Part 3 — Grand Jury

46-11-301. Summoning grand juries — composition.
46-11-302. Objections to grand jury and to grand jurors.
46-11-303. Foreman — powers and duties.
Sections 46-11-304 through 46-11-310 reserved.
46-11-311. Charge by court.
46-11-312. Powers and duties of grand jury.
46-11-313. Subpoena of witnesses.
46-11-314. Reception of evidence.
46-11-315. Advice and assistance to grand jury — who may be present.
46-11-316. Stenographer — transcript of testimony.
46-11-317. Secrecy of proceedings and disclosure.
46-11-318. Discharging jury.
46-11-319. Expenses of grand jury.
Sections 46-11-320 through 46-11-330 reserved.
46-11-331. Finding an indictment.

46-11-332. Presenting the indictment.
46-11-333. Procedure regarding defendant.

Part 4 — The Charge

46-11-401. Form of charge.
46-11-402. Record of charge — certified copy.
46-11-403. Amending the information.
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Part 5 — Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions.
46-11-502. Prosecution when conduct constitutes more than one offense.
46-11-503. When prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction — when a bar.
46-11-505. When former prosecution not a bar.

Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. When authorized by law, a prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver thereof;

(3) an information after leave of court has been granted;

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501.

46-11-102. When given methods required. (1) All prosecutions of offenses triable in the district courts shall be by indictment or information.

(2) All other prosecutions of offenses may be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502.

Part 2

Filing of Information

46-11-201. Leave to file information. (1) The county attorney may apply directly to the district court for permission to file an information against a named defendant. The application must be by affidavit supported by such evidence as the judge may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge shall grant leave to file the information, otherwise the application shall be denied.

(2) When there has been granted leave to file an information against the defendant, a warrant may issue for his arrest and he must be brought before the court unless the court orders otherwise.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b).

46-11-202. Leave to file information — when defendant is district judge. (1) If the person against whom an information is sought to be filed is a district court judge, the county attorney shall apply directly to the supreme court for permission to file the information. The supreme court shall then proceed in the manner provided in 46-11-201(1).

(2) When leave is granted by the supreme court, it shall designate and direct a judge of the district court of another district to preside at the trial of such information and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment. All necessary records shall be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. After the defendant has been examined and held to answer or has waived preliminary examination as provided in chapter 10 or after leave of court has been granted as provided in 46-11-201 and 46-11-202, the county attorney must file within 30 days in the proper district court an information charging the defendant with the offense for which he is held to answer or any other offense disclosed by the evidence. If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty.

History: En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302.

46-11-204. Procedure when county attorney decides not to file. If the county attorney determines an information ought not to be filed after the defendant has been held to answer following a preliminary examination or waiver thereof or after leave to file has been granted, he must within 30 days make, subscribe, and file with the clerk of the court a statement in writing containing his reasons in fact and in law for not filing an information. The court must examine such statements together with the evidence filed in the case, and if upon such examination the court is not satisfied with the statement, the county attorney shall be directed and required by the court to file the proper information and bring the case to trial.

History: En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.

Part 3

Grand Jury

46-11-301. Summoning grand juries — composition. (1) A grand jury must only be drawn and summoned when the district judge, in his discretion, considers a grand jury necessary and shall so order. The composition and drawing of a grand jury shall be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. If a member of the jury becomes unable to perform his duty, he may be replaced by an alternate.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part).

46-11-302. Objections to grand jury and to grand jurors. (1) The state may challenge the panel of a grand jury on the grounds that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges may be oral or in writing and shall be tried and decided by the court. At any time for cause shown the court may excuse or discharge a juror or jurors either temporarily or permanently, and in the latter event, the court may impanel another person or persons in place of the juror or jurors discharged.

(2) A motion to dismiss the indictment may be based on the grounds that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment shall not be dismissed on the ground that one or more members of the grand jury were not legally qualified if it appears from the record kept pursuant to 46-11-303 that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402.

46-11-303. Foreman — powers and duties. The court shall appoint one of the jurors to be foreman. The foreman shall have the power to administer oaths and affirmations and shall sign all indictments. He or another juror designated by him shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record shall not be made public except on order of the court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403.

46-11-304 through 46-11-310 reserved.

46-11-311. Charge by court. When the grand jury is impaneled and sworn, it shall be charged by the judge who summoned it. In doing so, the court shall give the grand jurors such information as it deems proper or as is required by law as to their duties and as to any charges of public offenses known to the court and likely to come before the grand jury.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a).

46-11-312. Powers and duties of grand jury. (1) When the grand jury has been impaneled, sworn, and charged, it shall retire to a private room and inquire into the offenses cognizable by it. The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment.

(2) If a member of a grand jury knows or has reason to believe that a public offense triable within the county has been committed, he shall declare it to his fellow jurors, who shall thereupon investigate it.

(3) The grand jury may inquire into:

(a) the case of every person imprisoned in the jail of the county on a criminal charge and not indicted or against whom an information or complaint has not been filed;

(b) the condition and management of the public prisons within the county;

(c) the willful or corrupt misconduct in office of public officers of every description within the county.

(4) The grand jury is entitled to free access at all reasonable times to the public prisons and to the examination without charge of all public records within the county.

(5) If in the judgment of the grand jury the services of an expert are necessary, the grand jury may employ one or more at an agreed compensation to be first approved by the court. If in the judgment of the grand jury the services of assistants to such experts are required, the grand jury may employ such assistants at a compensation to be agreed upon and approved by the court.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).

46-11-313. Subpoena of witnesses. A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court. The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct.

History: En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407.

46-11-314. Reception of evidence. (1) In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or furnished by legal documentary evidence or the deposition of a witness in the cases mentioned in chapter 15, part 2, of this title.

(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.

History: En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2).

46-11-315. Advice and assistance to grand jury — who may be present. (1) The grand jury may at all times ask the advice of the court or the judge thereof, the attorney general, or the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(2) The county attorney or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against

or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.

(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators who shall investigate and present the evidence acquired in such investigation to the grand jury.

(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4).

46-11-316. Stenographer — transcript of testimony. (1) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(3) The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5).

46-11-317. Secrecy of proceedings and disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to the county attorney for use in the performance of his duty. Otherwise a juror, attorney, interpreter, stenographer, or operator of a recording device or any typist who transcribes recorded testimony may disclose matters occurring before the grand jury only when so directed by the court preliminary to or in connection with a judicial proceeding or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury under 46-11-302(2). No obligation of secrecy may be imposed upon any person except in accordance with this rule.

(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons.

History: **En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409.**

46-11-318. Discharging jury. When the grand jury certifies completion of business before it and the court concurs, it shall be discharged by the court.

History: **En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part).**

46-11-319. Expenses of grand jury. All expenses of the grand jury, including special counsel and investigators, if any, shall be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or the clerk of the district court upon the written order of the judge of the district court of the county.

History: **En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f).**

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together, if unexplained or uncontradicted, would in its judgment warrant a conviction by a trial jury.

(2) An indictment cannot be found without the concurrence of at least eight grand jurors. When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury.

History: **(1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a).**

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be presented by their foreman in their presence to the court and must be filed with the clerk.

(2) When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment.

History: **En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b).**

46-11-333. Procedure regarding defendant. (1) When an indictment is found against a defendant, a warrant must issue for his arrest and he must be brought before the court unless the court orders otherwise.

(2) If the defendant is in custody or has given bail and eight jurors do not concur in finding an indictment, the foreman shall so report to the court in writing forthwith.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).

Part 4

The Charge

46-11-401. Form of charge. (1) A charge shall:

(a) be in writing and in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) specify the name of the court in which the charge is filed; and

(c) charge the commission of an offense by:

(i) stating the name of the offense;

(ii) citing in customary form the statute, rule, or other provision of law which the defendant is alleged to have violated;

(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended;

(iv) stating the time and place of the offense as definitely as can be done; and

(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty.

(2) If the charge is by information or indictment, it shall include endorsed thereon the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it shall be signed on oath by a person having knowledge of the facts or by the county attorney; if by information, it shall be signed by the county attorney or by his deputy; if by indictment, it shall be signed by the foreman of the grand jury.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e).

46-11-402. Record of charge — certified copy. If the charge is by information or indictment, it must be recorded by the clerk within 5 days after the same is filed in a book to be kept for that purpose. The judge must compare the record with the original indictment or information and certify the correctness thereof. In case the original is lost or destroyed, the defendant may be tried upon a copy taken from the record and certified by the clerk.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).

46-11-403. Amending the information. (1) (a) An information may be amended in matters of substance at any time not less than 5 days before trial with leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended.

(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant.

History: En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505; amd. Sec. 1, Ch. 62, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "information" for "charge"; deleted "once" following "amended" in first sentence; substituted "with leave" for "without leave" in (1)(a); added subsections (1)(b) through (1)(e).

46-11-404. Joinder and severance of offenses and defendants. (1) An indictment, information, or complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts. If two or more indictments, informations, or complaints are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, or complaint, and the defendant may be convicted of any number of the offenses charged. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count.

(3) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

History: En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4).

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged so that he may be a witness for the state.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, the court must order him to be discharged before the evidence is closed that he may be a witness for his codefendant.

History: En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6).

Part 5

Effect of Multiple Charges and Former Prosecutions

46-11-501. Definitions. (1) The term "same transaction" includes conduct consisting of:

(a) a series of acts or omissions which are motivated by a purpose to accomplish a criminal objective and which are necessary or incidental to the accomplishment of that objective; or

(b) a series of acts or omissions which are motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or the property thereof.

(2) An offense is an "included offense" when:

(a) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(c) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).

46-11-502. Prosecution when conduct constitutes more than one offense. When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(1) one offense is included in the other;

(2) one offense consists only of a conspiracy or other form of preparation to commit the other;

(3) inconsistent findings of fact are required to establish the commission of the offenses;

(4) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

(5) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2).

46-11-503. When prosecution based on same transaction barred by former prosecution. If the offenses were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge and if the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(2) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:

(a) a judgment of conviction which has not been reversed or vacated;

(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before verdict. Termination under either of the following circumstances is not improper:

(a) The defendant consents to the termination or waives his right to object to the termination.

(b) The trial court, in the exercise of its discretion, finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or outside the courtroom makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3).

46-11-504. Former prosecution in another jurisdiction — when a bar. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(1) The first prosecution resulted in an acquittal or in a conviction as defined in 46-11-503 and the subsequent prosecution is based on an offense arising out of the same transaction.

(2) The former prosecution was terminated, after the complaint had been filed on a misdemeanor charge or after the information had been filed or the indictment found on a felony charge, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated; and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4).

46-11-505. When former prosecution not a bar. A prosecution is not a bar within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(2) The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.

(3) The former prosecution resulted in a judgment of conviction which was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5).

Part 6

Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

Section
46-12-101. Arraignment defined.
46-12-102. Place of arraignment.
46-12-103. Presence of defendant.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. General rules of procedure for arraignment.
46-12-202. Court to advise defendant of his rights and the charges.
46-12-203. Time allowed to answer.
46-12-204. The plea.
46-12-205. Record of arraignment.
46-12-206. Irregularity of arraignment.

Part 1

General Provisions

46-12-101. Arraignment defined. "Arraignment" is the formal act of calling the defendant into open court to answer the charge against him.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant shall be arraigned in the court in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602.

46-12-103. Presence of defendant. If the offense charged is a felony, the defendant must be personally present for arraignment. If the offense charged is a misdemeanor, he may appear by counsel.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603.

46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. General rules of procedure for arraignment. The arraignment in any court in this state must be conducted in the following manner:

(1) The arraignment must be in open court.

(2) The court must inquire of the defendant or his counsel the defendant's true name, and if the defendant's true name be given as any other than that used in the charge, the court must order the defendant's name to be substituted for the name under which he is charged. The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged.

(3) The court must determine whether the defendant is under any disability which would prevent the court in its discretion from proceeding with the arraignment. The arraignment may be continued until such time as the court determines the defendant is able to proceed.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c).

46-12-202. Court to advise defendant of his rights and the charges. (1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(d) of the time prescribed by statute to enter a plea;

(e) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint.

History: **En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part).**

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: **En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.**

46-12-204. The plea. (1) The defendant shall enter a plea of guilty or not guilty to the indictment, information, or complaint. If the defendant refuses to plead to the indictment, information, or complaint, a plea of not guilty must be entered.

(2) The court may refuse to accept a plea of guilty and shall not accept the plea of guilty without first determining that the plea is voluntary with an understanding of the charge.

History: **En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part).**

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: **En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).**

46-12-206. Irregularity of arraignment. No irregularity in the arraignment which does not affect the substantial rights of the defendant shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity.

History: **En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608.**

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

Section

46-13-101. Defenses and objections which may be raised before trial.
46-13-102. Defenses and objections which must be raised before trial.
46-13-103. Time of making motion.
46-13-104. Time of hearing motion.
46-13-105. If motion disallowed, plea to be entered.
46-13-106. Effect of order of dismissal.

Part 2 — Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial.
46-13-204. Transfer of trial.

Part 3 — Suppression of Evidence

46-13-301. Motion to suppress confession or admission.
46-13-302. Motion to suppress evidence illegally seized.

Part 1

General Provisions

46-13-101. Defenses and objections which may be raised before trial. Any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion to dismiss or for other appropriate relief. The motion shall state with particularity the grounds therefor and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701.

46-13-102. Defenses and objections which must be raised before trial. Defenses and objections based on defects in the institution of the prosecution or in the complaint, indictment, or information other than that it fails to show jurisdiction in the court or to charge an offense may be raised only before trial by motion to dismiss or for other appropriate relief. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection as herein provided constitutes a waiver thereof, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment, information, or complaint to charge an offense shall be noticed by the court at any time during the pendency of the proceeding.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

46-13-103. Time of making motion. The motion provided for in 46-13-101 and 46-13-102 shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

46-13-104. Time of hearing motion. A motion before trial raising defenses or objections shall be determined before trial unless the court orders that it be deferred for determination at the trial of the general issue.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705.

46-13-105. If motion disallowed, plea to be entered. If a motion is determined adversely to the defendant, he shall plead if he has not previously pleaded. A plea previously entered shall stand.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

46-13-106. Effect of order of dismissal. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom or, if admitted to bail, have his bail exonerated or money deposited instead of bail refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2).

Part 2

Specific Pretrial Motions

46-13-201. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the attorney prosecuting and in furtherance of justice, order an action, complaint, information, or indictment to be dismissed. The reasons of the dismissal must be set forth in an order entered upon the minutes.

(2) The court, unless good cause to the contrary is shown, must order the prosecution to be dismissed if a defendant whose trial has not been postponed upon his application is not brought to trial within 6 months after entry of plea upon a complaint, information, or indictment charging a misdemeanor.

(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony.

History: En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703.

46-13-202. Motion for continuance. (1) The defendant or the state may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

History: En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708.

46-13-203. Change of place of trial. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county. The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter.

(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant

or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, it shall:

(a) transfer the cause to any other court of competent jurisdiction in any county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to insure that a fair trial may be had.

History: En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979; amd. Sec. 1, Ch. 556, L. 1981.

Compiler's Comments

1981 Amendment: Added subsections (3)(b) and (3)(c).

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.

Part 3

Suppression of Evidence

46-13-301. Motion to suppress confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by him on the ground that it was not voluntary. The motion shall be in writing and state facts showing wherein the confession or admission was involuntary.

(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which, if true, show that the confession or admission was not voluntarily made, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

(5) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(6) If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case.

History: En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805; amd. Sec. 1, Ch. 44, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary" for "The burden of proving that a confession or admission was involuntary shall be on the defendant" in (4).

46-13-302. Motion to suppress evidence illegally seized. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything so obtained. The motion shall be in writing and state facts showing wherein the search and seizure were unlawful.

(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting.

(4) If the allegations of the motion state facts which if true show that the search and seizure were unlawful, the court shall conduct a hearing into the merits of the motion. The burden of proving that the search and seizure were unlawful shall be on the defendant.

(5) If the motion is granted, the evidence shall not be admissible against the movant at any trial of the case.

History: En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806.

CHAPTER 14

MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

Section
46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment.
46-14-202. Psychiatric examination of defendant.
46-14-203. Report of the examination.
Sections 46-14-204 through 46-14-210 reserved.
46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.
46-14-212. Examination by psychiatrist chosen by state or defendant.
46-14-213. Psychiatric testimony upon trial.
Sections 46-14-214 through 46-14-220 reserved.
46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.

46-14-302. Discharge or release upon motion of superintendent.
46-14-303. Application for discharge or release by committed person.
46-14-304. Recommitment after conditional release.
Sections 46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.
46-14-313. Discharge of defendent from supervision.

Part 4 — Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.

History: En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind which is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502.

46-14-103. Mental disease or defect excluding fitness to proceed. No person who, as a result of mental disease or defect, is unable to understand the proceedings against him or to assist in his own defense shall be tried, convicted, or sentenced for the commission of an offense so long as such incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Requirement of notice — form of verdict and judgment. (1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense.

(2) When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental

disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979; amd. Sec. 1, Ch. 593, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason" for "When the defendant is acquitted on the ground" at the beginning of (2).

46-14-202. Psychiatric examination of defendant. (1) If the defendant or his counsel files a written notice of his intent to rely on a mental disease or defect under 46-14-201 or raises the issue of his fitness to proceed, the court shall appoint at least one qualified psychiatrist or shall request the superintendent of Warm Springs state hospital to designate at least one qualified psychiatrist, which designation may be or include himself, to examine and report upon the mental condition of the defendant.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period of not exceeding 60 days or such longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination any method may be employed which is accepted by the medical profession for the examination of those alleged to be suffering from mental disease or defect.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979; amd. Sec. 1, Ch. 616, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "If . . . proceed" for "When there is reason to doubt the defendant's fitness to proceed or reason to believe that mental disease or defect of the defendant will otherwise become an issue in the cause" in (1).

46-14-203. Report of the examination. (1) The report of the examination shall include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant;

(c) if the defendant suffers from a mental disease or defect, an opinion as to his capacity to understand the proceedings against him and to assist in his own defense; and

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979.

46-14-204 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(1).

46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979.

46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979.

46-14-214 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised only by the defendant or his counsel. When the issue is raised, it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are chargeable to the state but the state may recover them from the estate of the defendant.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "or his counsel" for "with the advice of counsel" and made a minor change in phraseology in (1); and deleted "in the first instance" before "chargeable", substituted "state" for "county in which the indictment was found or the information filed" after "chargeable to the", substituted "state" for "county" before "may recover", and deleted "if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere" after "estate of the defendant" in (5).

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of institutions.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979.

Part 3

Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial shall be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The hearing shall be conducted by the court which ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(4) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979; amd. Sec. 2, Ch. 593, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "found not guilty for the reason" for "acquitted on the ground" after "When a defendant is" at the beginning of (1); added all the material in (1) after "essential element of the offense charged, the court shall order" near the beginning of (1); added "The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant" at the beginning of (2); substituted "A person committed to the custody of the superintendent shall have a hearing within 180 days of his confinement" for "A person so confined shall have a hearing, unless waived, within 50 days of his confinement" at the beginning of (3); and inserted the sentence "The hearing shall be conducted by the court which ordered the commitment unless the court transfers jurisdiction to the third judicial district." in the middle of (3).

46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of Warm Springs state hospital believes that a person committed to his custody under 46-14-301 may be discharged or released on condition without danger to himself or others, he shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the county attorney of the county from which the defendant was committed.

(2) The court shall then appoint at least two qualified psychiatrists to examine the person and to report their opinion as to his mental condition within 60 days or a longer period which the court determines to be necessary

for the purpose. To facilitate the examinations and the proceedings thereon, the court may have the person confined in any institution located near the place where the court sits which may hereafter be designated by the superintendent of Warm Springs state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) of this section and the testimony of the reporting psychiatrists which the court considers necessary that the committed person may be discharged or released on condition without danger to himself or others, the court shall order his discharge or his release on conditions which the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that he may safely be discharged or released. According to the determination of the court upon the hearing, the committed person shall then be discharged or released on conditions which the court determines to be necessary or shall be recommitted to the custody of the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedures prescribed in this section and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979.

46-14-303. Application for discharge or release by committed person. A committed person may make application for his discharge or release to the court by which he was committed, and the procedure to be followed upon the application is the same as that prescribed above in the case of an application by the superintendent of Warm Springs state hospital. However, an application by a committed person need not be considered until he has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person shall not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for his release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5).

46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the superintendent of Warm Springs state hospital, subject to discharge or release only in accordance with the procedures prescribed in 46-14-302 and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979.

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was suffering from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

History: **En. Sec. 10, Ch. 713, L. 1979.**

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: **En. Sec. 11, Ch. 713, L. 1979.**

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312(2), the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: **En. Sec. 12, Ch. 713, L. 1979.**

Part 4

Privileged Communications

46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under 46-14-311, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt.

History: En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979.

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

Section

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Part 1

Subpoenas and Witnesses

46-15-101. Subpoenas. Upon the request of the prosecuting attorney or the defendant or his attorney, the court or the clerk of the court shall issue subpoenas. The subpoena shall state the name of the court and the title, if any, of the proceeding and shall command each person to whom it is directed to attend and give testimony and produce objects and documents at the time and place specified therein.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a).

46-15-102. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer must serve in his county any subpoena delivered to him for service either on the part of the state or of the defendant.

(2) Service of a subpoena shall be made by delivering a copy thereof to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service must without delay make a written return of the service subscribed by him stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f).

46-15-103. Indigent defendants. When the defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed. If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing by affidavit or otherwise.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b).

46-15-104. Expenses of witness. When a person attends before a magistrate, grand jury, or court as a witness in a criminal case upon a subpoena or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of the witness.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c).

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.

46-15-106 through 46-15-110 reserved.

46-15-111. Definitions. (1) "Witness", as used in 46-15-112 through 46-15-114, shall include a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The word "state" shall include any territory of the United States and the District of Columbia.

History: **En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.**

46-15-112. Summoning witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of such court that there is a criminal prosecution pending in such court or that a grand jury investigation has commenced or is about to commence, that a person being within this state is a material witness in such prosecution or grand jury investigation, and that his presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(3) If said certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure his attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before him for said hearing. The judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: **En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809.**

46-15-113. Witness from another state summoned to testify in this state. (1) Whenever a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, it is prima facie proof of the desirability of such custody and delivery and the judge may direct that the witness be brought before him immediately. If the judge is satisfied as to the desirability of such custody and delivery, he may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold him unless and until he is released by bail, recognizance, or order of the judge issuing the certificate.

(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state.

(4) A witness who has appeared in accordance with the provisions of the summons may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(5) If the witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state.

History: **En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810.**

46-15-114. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a summons directing him to attend and testify in this state, he shall not, while in this state pursuant to such summons or order, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons.

(2) If a person passes through this state while going to another state in obedience to a summons or order to attend and testify in that state or while returning therefrom, he shall not, while so passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before his entrance into this state under the summons or order.

History: **En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811.**

Part 2

Depositions

46-15-201. When depositions taken. (1) If it appears that a prospective witness may be unable to attend or prevented from attending a trial or hearing or is or may become a nonresident of the state or is unwilling to provide relevant information to a requesting party and that his testimony is material and that it is necessary to take his deposition in order to prevent a failure of justice, the court, at any time after the preliminary hearing or the filing of the indictment or the information, may upon motion and notice to the parties order that his testimony be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be produced at the same time and place.

(2) If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a).

46-15-202. Procedure for taking depositions — filing. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice shall state the name and address of each person to be examined. On motion of a party upon whom the notice is served, the court for cause shown may extend or shorten the time.

(2) A deposition shall be taken in the manner provided in civil actions. The court at the request of a defendant may direct that a deposition be taken on written interrogatories in the manner provided in civil actions.

(3) The court shall transmit the deposition to the clerk of the court making the order, there to be filed and held until the action shall come on for trial.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d).

46-15-203. Additional requirements when initiated by state or witness. The following additional requirements shall apply if the deposition is taken at the instance of the state or a witness:

(1) The officer having custody of a defendant shall be notified of the time and place set for examination and keep him in the presence of the witness during the examination.

(2) A defendant not in custody shall be given notice and shall have the right to be present at the examination.

(3) The state shall pay to the defendant's attorney and to a defendant not in custody expenses of travel and subsistence for attendance at the examination.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. (1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

(a) the witness is dead;

(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of sickness or infirmity; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(2) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Discovery of witnesses — notice of certain defenses. In all criminal cases originally triable in district court, the following rules apply:

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment a list of the witnesses the prosecution intends to call. The prosecution may, any time after arraignment, add to the list the names of any additional witnesses upon a showing of good cause. The list shall include the names and addresses of the witnesses. This subsection does not apply to rebuttal witnesses.

(2) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and file with the clerk of the court, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit:

(a) a statement of intention to interpose the defense of justifiable use of force (formerly self-defense), entrapment, compulsion, or alibi or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged; and

(b) if the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court the names and addresses of all witnesses other than the defendant to be called by the defense in support thereof. Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list, except upon good cause shown. This subsection does not apply to rebuttal witnesses.

(3) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court no later than 5 days before trial or at such later time as the court may for good cause permit a list of witnesses the prosecution intends to call as rebuttal witnesses to the defenses of justifiable use of force, entrapment, compulsion, alibi, or the defense that the defendant did not have a particular state of mind that is an essential element of the offense charged.

History: **En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979; amd. Sec. 1, Ch. 557, L. 1981.**

Compiler's Comments

1981 Amendment: Changed "self-defense" to "justifiable use of force (formerly self-defense), entrapment, compulsion," in (2)(a); inserted "other than the defendant" after "witnesses" in first sentence of (2)(b); added subsection (3).

46-15-302. Discovery of writings and objects. In all criminal cases originally triable in the district court, the following rules shall apply:

(1) Upon motion of either party and upon showing of good cause, the court may issue a subpoena prior to the trial directing any person other than the defendant to produce books, statements, papers, and objects before the court at a time prior to the trial or prior to the time when they are to be offered in evidence. Upon their production, the court may permit the books, statements, papers, objects, or portions thereof to be inspected, copied, or photographed by the parties and their attorneys.

(2) Upon motion of the defendant within a reasonable time before trial, the court may, upon a showing of good cause, order the prosecution to produce, prior to trial at a time and place designated by the court, for inspection, photographing, or copying by the defendant designated books, statements, papers, or objects obtained from the defendant or others by the prosecution which are material, relevant, and necessary to the preparation of the defendant's case. This subsection does not apply to the work product of the prosecution, which is documents drawn up by law enforcement officials for internal communications and law enforcement officers' field notes, except that any exculpatory information contained in such documents or notes must be produced.

(3) (a) On motion of any party within a reasonable time before trial, each party shall produce at a reasonable time and place designated by the court all documents, papers, or things which it intends to introduce in evidence. Each party shall be permitted to inspect or copy, in the presence of a person designated by the court, any such documents, papers, or things. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just. If the evidence relates to scientific tests or experiments, the opposing party shall, if practicable, be permitted to be present during the tests and to inspect the results thereof. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make other appropriate orders.

(b) If, subsequent to compliance with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under this rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. The court shall exclude any evidence not presented for inspection or copying pursuant to this rule unless good cause is shown for failure to comply. In the latter case the opposing party is entitled to a recess or a continuance during which it may inspect or copy the evidence in the manner provided for in this subsection (3).

History: (1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.

46-15-303. Motion to produce confession or admission. (1) On motion of a defendant in any criminal case made prior to trial, the court shall order the state to furnish the defendant with a copy of any written confession or admission and a list of the witnesses to its making. If the defendant has made an oral confession or admission, a list of the witnesses to its making shall be furnished.

(2) The list of witnesses may, upon notice and motion, be amended by the state prior to trial.

(3) No such confession or admission shall be received in evidence which has not been furnished in compliance with subsection (1) unless the court is satisfied that the prosecutor was unaware of the existence of such confession or admission prior to trial and that he could not have become aware of such in the exercise of due diligence.

History: En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.

46-15-304 through 46-15-310 reserved.

46-15-311. Compelling testimony or production of evidence — immunity. Before or during trial in any judicial proceeding, a justice of the supreme court or judge of the district court, upon request by the attorney prosecuting or counsel for the defense, may require a person to answer any question or produce any evidence that may incriminate him. If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, he cannot be prosecuted or subjected to any penalty or forfeiture, other than a prosecution or action for perjury or contempt, for or on account of any transaction, matter, or thing concerning which he testified or produced evidence.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807.

46-15-312. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4).

Part 4

Evidence in Cases Involving Sexual Offenses

46-15-401. When videotaped testimony admissible. For any prosecution commenced under 45-5-502(3) or 45-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

History: En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979.

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.

CHAPTER 16

TRIAL IN DISTRICT COURT

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Section

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Part 1

General Provisions

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Right to jury trial — waiver. (1) Defendants in all criminal cases shall have a right to trial by jury not to exceed 12 in number. The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than 12.

(2) Upon written consent of the parties, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d).

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury except that on a trial for criminal defamation the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-102(2).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Failure of county attorney to attend. If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Presence of defendant — mistrial for absence. (1) The defendant must be personally present at the trial and rendition of judgment in all cases tried in the district court. If the defendant fails to appear at any time during the course of the trial and before the jury has retired for its deliberations or the case has been finally submitted to the judge and if after the exercise of reasonable diligence his presence cannot be procured, the court shall declare a mistrial and the cause may again be tried.

(2) In all cases appealed to the supreme court, it shall be conclusively deemed that the defendant was present in court at all stages of the trial unless the record on appeal affirmatively shows to the contrary.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

Part 2

Rules of Evidence for Criminal Cases

46-16-201. Applicability of civil rules. The rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided in this code.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.

46-16-203. Burden of the state in homicide trial. (1) In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

(2) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004.

46-16-204 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.

46-16-212. Competency of spouses. Except with the consent of both or in cases of criminal violence by one upon the other, abandonment or neglect of children by either party, or abandonment or neglect of one by the other, neither spouse is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties.

History: En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011.

46-16-213. Testimony of person legally accountable. A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence which in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012.

Part 3

Selecting the Jury

46-16-301. Formation of trial jury. (1) Trial juries for criminal actions are formed in the same manner as trial juries in civil actions, except that the total number of jurors drawn shall be at least 12 plus the total number of peremptory challenges.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a); amd. Sec. 5, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "excuses" for "exemptions" in (2).

46-16-302. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn shall be raised by a motion to discharge the jury panel. The motion shall be made at least 5 days prior to the term for which the jury is drawn. For good cause shown, the court may entertain the motion at any time thereafter.

(2) The motion shall be in writing supported by affidavit and shall state facts which show that the jury panel was improperly selected or drawn.

(3) If the motion states facts which show that the jury panel has been improperly selected or drawn, it shall be the duty of the court to conduct a hearing. The burden of proof shall be on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908.

46-16-303. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their addresses when the names have been drawn.

(2) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3).

46-16-304. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(a) consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(d) having served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury which tried another person for the offense charged;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged;

(j) having a state of mind in reference to the case or to either of the parties which would prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4); amd. Sec. 6, Ch. 51, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "excuse" for "exemption" and "excused" for "exempted" in (3).

46-16-305. Peremptory challenges. Each defendant shall be allowed eight peremptory challenges in capital cases, six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight. The state shall be allowed the same number of peremptory challenges as all of the defendants. In a criminal case tried in the district court before a six-person jury, the state and all the defendants shall be allowed three peremptory challenges each. When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6).

46-16-306. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5).

46-16-307. Alternate jurors. (1) After the jury is impaneled and sworn, the court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7).

Part 4

Order of Trial

46-16-401. Order of trial. (1) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section.

(2) The county attorney must state the case and offer evidence in support of the prosecution. The defendant may make his opening statement prior to the state's offer of evidence or may state his defense and then offer evidence in support thereof after the state rests.

(3) The parties may then respectively offer rebutting testimony only unless the court for good cause permits them to offer evidence upon their original case.

(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to. It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.

(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.

(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910.

46-16-402. When order may be departed from. When the state of the pleading requires it or in any other case for good reasons and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911.

46-16-403. Evidence insufficient to go to jury. When, at the close of the state's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9).

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time before the submission of the case, in the discretion of the court, be permitted to separate or be kept in charge of a proper officer. The officer must be sworn to keep the jurors together until the next meeting of the court, to suffer no person to speak to them or communicate with them or to do so himself on any subject connected with the trial, and to return them into court at the next meeting thereof.

(2) (a) The jury must also at each adjournment of the court, whether permitted to separate or kept in charge of officers, be admonished by the court that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion thereon until the cause is finally submitted to them.

(b) In all cases appealed to the supreme court, it shall be conclusively deemed that the court or judge gave the proper admonition in accordance with the provision of subsection (2)(a) unless the record affirmatively shows to the contrary.

History: En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e).

46-16-502. View of relevant place or property. When the court deems it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view said place or personal property in the presence of the defendant and his counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the same. The sheriff or bailiff must be sworn to suffer no person to speak or otherwise communicate with the jury or to do so himself on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they must require the officer to conduct them into court. When the jurors are brought into court, the information requested may be given in the discretion of the court. If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979.

46-16-504. Items which may be taken into the jury room. Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and notes of the proceedings taken by themselves.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c).

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn from time to time as to other business, but it must nevertheless be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914.

Part 6

Verdict — Disposition of Defendant

46-16-601. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes. 95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901.

46-16-602. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902.

46-16-603. Form of verdict. (1) The jury shall return a general verdict to each offense charged. The verdict must be unanimous in all criminal actions. The verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct.

10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3).

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Acquittal — when defendant discharged. If judgment of acquittal is given on a general verdict and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916.

Part 7

Motion for a New Trial

46-16-701. Definition and effect of a new trial. A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered. The granting of a new trial places the parties in the same position as if there had been no trial.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1).

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds therefor. It must be filed by the defendant within 30 days following a verdict or finding of guilty. Reasonable notice of the motion must be served on the state.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters Justices' and City Courts

Section

46-17-101. Initiation of proceedings — amending the complaint.

46-17-102. Record of proceedings.
46-17-103. Change of place of trial.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Trial by jury.
46-17-202. Formation of trial jury.
46-17-203. Plea of guilty.
46-17-204. Time to prepare for trial.
46-17-205. Presence of defendant.
Sections 46-17-206 through 46-17-210 reserved.
46-17-211. Verdict.

Part 3 — Procedure After Trial Justices' and City Courts

46-17-301. Sentence and judgment.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.
Sections 46-17-305 through 46-17-310 reserved.
46-17-311. Appeal.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Part 1

Preliminary Matters — Justices' and City Courts

46-17-101. Initiation of proceedings — amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001; amd. Sec. 2, Ch. 62, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (2).

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Change of place of trial. (1) The defendant or prosecution may move before trial for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(2) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the

state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had, it shall transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.

Part 2

The Trial — Justices' and City Courts

46-17-201. Trial by jury. (1) The defendant is entitled to a jury of six qualified persons, but the parties may agree to a number less than six.

(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1).

46-17-202. Formation of trial jury. (1) At the time of preparing the district court jury list, the county jury commission shall prepare a jury list for each justice's and city court within the county. Each list shall consist of residents of the appropriate county, city, or town. The lists shall be selected in any reasonable manner which ensures fairness, and each shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists shall be filed in the office of the clerk of the district court. The appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each one orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005.

46-17-203. Plea of guilty. Before or during trial, a plea of guilty may be accepted when:

(1) the defendant enters a plea of guilty in open court; and

(2) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2).

46-17-204. Time to prepare for trial. After the plea, the defendant is entitled to a reasonable time to prepare for trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Presence of defendant. The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Verdict. (1) The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter it or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together and the jury cannot agree upon a verdict as to all, the jury may render a verdict as to those in regard to whom it does agree. A judgment must be entered accordingly on the verdict, and the case as to the rest may be tried by another jury.

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Part 3

Procedure After Trial — Justices' and City Courts

46-17-301. Sentence and judgment. (1) If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the rendering of the verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence as provided in chapter 18, part

2, of this title. If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it considers advisable under the circumstances.

(4) The determination and imposition of sentence are the exclusive duty of the court.

History: **En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.**

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $10 of the fine. When such a judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is sooner paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected therefrom, deducting his fees for the collection.

History: **En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).**

46-17-303. Deposit of fines. All fines imposed and collected by a justice's or city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The justice or city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: **En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part).**

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: **En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.**

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal. (1) All cases on appeal from justices' or city courts must be tried anew in the district court and may be tried before a jury of six selected in the same manner as a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges.

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days, the entire record of the justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed. It is the duty of the defendant to perfect the appeal.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

Section

46-18-101. Policy — liberal construction.
46-18-102. Rendering judgment and pronouncing sentence.

46-18-103. Sentence to be imposed by judge.
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46-18-111. Presentence investigation.
46-18-112. Content of investigation.
46-18-113. Availability of report to defendant and others.

Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
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Sections 46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
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46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.
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46-18-232. Payment of costs by defendant.
46-18-233. Fine or costs as a condition on suspended or deferred sentence.
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46-18-301. Hearing on imposition of death penalty.
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Part 5 — Persistent Felony Offenders

46-18-501. Definition of persistent felony offender.
46-18-502. Sentencing of persistent felony offender.
46-18-503. Procedural requirements if sentence to be imposed.

Part 6 — Procedure After Sentencing

46-18-601. Judgment in writing — lien.
46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.
46-18-603. Disposition of fines and forfeitures.
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Part 7 — Jail Work Release Program

46-18-701. Parole during employment hours.

46-18-702. Disposition of prisoner's earnings.
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46-18-801. Effect of conviction — civil disabilities.

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46-18-901. Review division of the supreme court for review of sentences.
46-18-902. Interested judge not to act.
46-18-903. Application for review.
46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 1

Policy and Preliminary Procedure

46-18-101. Policy — liberal construction. This chapter shall be liberally construed to the end that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities; that dangerous offenders shall be correctively treated in custody for long terms as needed; and that other offenders shall be dealt with by probation, suspended sentence, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual.

History: **En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201.**

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

History: **En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202.**

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: **En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.**

46-18-104 through 46-18-110 reserved.

46-18-111. Presentence investigation. No defendant convicted of a crime which may result in commitment for 1 year or more in the state prison shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense.

History: **En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203.**

46-18-112. Content of investigation. Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant; his criminal record and social history; the circumstances of the offense; the time the defendant has been in detention; and the harm to the victim, his immediate family, and the community. All local and state mental and correctional institutions, courts, and police agencies shall furnish the probation officer, on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the court.

History: En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204.

46-18-113. Availability of report to defendant and others. (1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information.

(2) Such reports shall be part of the record but shall be sealed and opened only on order of the court.

(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205.

Part 2

Form of Sentence

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, excepting sentences for driving under the influence of alcohol or drugs, for a period not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;
(ii) jail time not exceeding 90 days;
(iii) conditions for probation;
(iv) restitution;
(v) payment of a fine as provided in 46-18-231;
(vi) payment of costs as provided in 46-18-232 and 46-18-233;
(vii) payment of costs of court appointed counsel as provided in 46-8-113;
(viii) community service;
(ix) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or
(x) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Such reasonable restrictions or conditions may include any of those listed in subsections (1)(a)(i) through (1)(a)(x).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution with or without a fine as provided by law for the offense;

(f) impose any combination of subsections (1)(b) through (1)(e).

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, is not a credit against the sentence unless the court orders otherwise.

(3) Except as provided in 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2).

(4) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102(2) may not be deferred or suspended.

(5) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979; amd. Sec. 6, Ch. 198, L. 1981; amd. Sec. 1, Ch. 207, L. 1981; amd. Sec. 7, Ch. 415, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 198 added subsections (1)(a)(v), (1)(a)(vi), and (1)(a)(viii), relating to payment of fine, payment of costs, and community service, respectively; in (1)(b), added "or conditions" following "restrictions" in two places; added subsection (1)(d) relating to requiring payment of costs; revised subsection references to reflect added subsections.

Chapter 207 added subsection (5), restricting deferral of imposition of sentence in a felony case.

Chapter 415 inserted subsection (1)(a)(vii) relating to payment of costs; inserted "or conditions" after "restrictions" in the second and third sentence of (1)(b); changed "(1)(a)(vi)" to "(1)(a)(ix)" in (1)(b); added subsection (1)(d) relating to payment of costs; and changed "subsections (1)(b), (1)(c), and (1)(d)" to "subsections (1)(b) through (1)(e)" in (1)(f).

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979; amd. Sec. 10, Ch. 583, L. 1981.

Compiler's Comment

1981 Amendment: Substituted "supervised release program" for "prisoner furlough program" in the middle of (2).

Severability: Section 12, Ch. 583, L. 1981, was a severability section.

46-18-203. Revocation of suspended or deferred sentence. A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized, during the period of the suspended sentence or deferred imposition of sentence, in his discretion, to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5); amd. Sec. 1, Ch. 328, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "department of institutions" for "board of pardons" after "under the jurisdiction of the" in the second sentence.

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed.

History: En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207.

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: **En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).**

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison or may fine the offender in an amount not to exceed $50,000 or may impose both such fine and imprisonment.

History: **En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

46-18-214 through 46-18-220 reserved.

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

History: En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17; amd. Sec. 1, Ch. 108, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

Interim Study Committee Bill: Chapter 108, L. 1981 (HB 20), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (3), (4), and (5) of 46-18-201, 46-18-221(3), and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense.

History: En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 207 added ", and (5)" after "the restrictions . . . prescribed by subsections (3), (4) [of 46-18-201]" in the first sentence.

Chapter 327 changed the reference to "46-18-502(2)" to "46-18-502(3)" to reflect amendment of that section.

Interim Study Committee Bill: Chapter 327, L. 1981 (HB 12), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: **En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.**

46-18-224 through 46-18-230 reserved.

46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103(2), 45-5-202(2), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2) and (3), 45-9-102(3), and 45-9-103(2), a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

History: **En. Sec. 1, Ch. 198, L. 1981.**

Compiler's Comments

1981 Title: The title to Ch. 198, L. 1981 (SB 14), read: "An act providing for fines and assessment of costs in felony and misdemeanor criminal cases; allowing community service as a condition of deferred or suspended sentences; amending section 46-18-201, MCA."

Interim Study Committee Bill: Chapter 198, L. 1981 (SB 14), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

Codification Instruction — Other Sections Amended: Section 7, Ch. 198, L. 1981, provided: "(1) It is intended that sections 1 through 5 [46-18-231 through 46-18-235] be codified as an integral part of Title 46, chapter 18, and the provisions of Title 46, chapter 18, apply to sections 1 through 5.

(2) There is added to those sections listed in subsection (1) of section 1 [46-18-231], following the language in those sections specifying the term of imprisonment for which an offender may be imprisoned, the words "and may be fined not more than $50,000" or other similar language allowing the court to fine the offender a maximum of $50,000 in addition to a term of imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accor-

dance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118."

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 198, L. 1981 (SB 14), read: "An act providing for fines and assessment of costs in felony and misdemeanor criminal cases; allowing community service as a condition of deferred or suspended sentences; amending section 46-18-201, MCA."

Interim Study Committee Bill: Chapter 198, L. 1981 (SB 14), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid to the county general fund of the county in which the court is held.

History: En. Sec. 5, Ch. 198, L. 1981.

Part 3

Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim.

History: En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8.

46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: **En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.**

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: **En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.**

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

History: **En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.**

Part 4

Factors That Reduce Sentence

46-18-401. Merger of sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term except as provided in subsection (5); and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation shall be merged in any new sentence of commitment or probation.

(2) The court merging the sentences shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite the sentences being merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses shall run concurrently unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program,

the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.

History: En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979; amd. Sec. 11, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervised release program" for "prisoner furlough program" in the middle of (5).

Severability: Section 12, Ch. 583, L. 1981 was a severability section.

46-18-402. Credit for time served. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $10 for each day so incarcerated prior to conviction, except that in no case shall the amount so allowed or credited exceed the amount of the fine.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215.

46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is not eligible to be designated as a nondangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Whenever the sentence and judgment do not contain such a determination, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

History: **En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979.**

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: **En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).**

46-18-502. Sentencing of persistent felony offender. (1) Except as provided in subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981.

Compiler's Comments

1981 Amendments: Subsections (3) and (4) of sec. 7, Ch. 198, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section."

Chapter 327 inserted "Except as provided in subsection (2)" at the beginning of (1); inserted subsection (2), except the language relating to the $50,000 fine, which was added pursuant to Ch. 198 (see above); inserted "or the first 10 years of a sentence imposed under subsection (2)" in (3); added subsection (4).

Interim Study Committee Bill: Chapter 327, L. 1981 (HB 12), was introduced at the request of the interim Committee on Corrections Policy and Facility Needs. See committee report, Legislative Council, 1980.

Cross-References

Prohibition on deferral of imposition of sentence, 46-18-201(5).

Additional sentence for offenses committed with a dangerous weapon, 46-18-221.

46-18-503. Procedural requirements if sentence to be imposed. (1) If the state seeks treatment of the accused as a persistent felony offender under 46-18-502, notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty.

(2) The notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

(b) The notice and the charges of prior convictions contained therein shall not be made public or in any manner be made known to the jury before the jury's verdict is returned upon the felony charge. However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in the Montana Rules of Evidence.

(3) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing. The court shall then fix a time for hearing with at least 3 days' notice to the accused.

(4) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of 46-18-502.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506.

Part 6

Procedure After Sentencing

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228.

46-18-604. Transmittal of sentencing data to supreme court — compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

History: En. Sec. 1, Ch. 459, L. 1981.

Compiler's Comments

1981 Title: The title to HB 773 (Ch. 459, L. 1981) read: "An act to provide for the recording and distribution of sentencing data pertaining to the performance of district court judges."

Part 7

Jail Work Release Program

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).**

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).**

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: **En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).**

Part 8

Effect of Conviction

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: **En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227.**

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: **En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).**

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: **En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).**

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: **En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.**

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed.

(3) If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the

review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

Section

46-19-101. Commitment of defendant.
46-19-102. Execution of a fine.
46-19-103. Execution of death.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.
46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 1

Method of Execution

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.

46-19-102. Execution of a fine. (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until fine be paid, the defendant must be committed to the custody of the proper officer and by him detained until the judgment is complied with. The imprisonment must not exceed 1 day for every $10 of the fine.

History: **En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302.**

46-19-103. Execution of death. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 5 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead.

(3) A sentence of death must be executed within the walls or yard of a jail or some convenient private place in the county where the trial took place.

(4) The sheriff of the county must be present and shall supervise such execution which shall be conducted in the presence of a physician, the county attorney of the county, and at least 12 reputable citizens to be selected by the sheriff. The sheriff shall, at the request of the defendant, permit such priests or ministers, not exceeding two, as the defendant may name and only persons, relatives, or friends, not to exceed five, to be present at the execution together with such peace officers as he may think expedient to witness the execution. No other persons than those mentioned in this subsection can be present at the execution, nor can any person under age be allowed to witness the same.

(5) After the execution, the sheriff must make a return upon the death warrant showing time, mode, and manner in which it was executed.

History: **En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Sec. 1, Ch. 191, L. 1981.**

Compiler's Comments

1981 Amendment: Added the last sentence of (1) relating to setting the execution date after a stay.

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: **En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.**

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the sheriff must execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution of the department of institutions for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of Warm Springs state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the sheriff shall be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the sheriff must execute the judgment. If it is found that the woman is pregnant, the sheriff must suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

History: En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307.

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending

state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: **En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.**

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: **En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.**

46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of institutions to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: **En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979.**

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: **En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.**

46-19-305. Hearings requested by other states. The board of pardons and the department of institutions shall hold such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: **En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311.**

CHAPTER 20

APPEALS

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Chapter Compiler's Comments

Interim Study of Delays: SJR 30 (1981) requested an interim study of delays in the administration of appeals of criminal cases in the criminal justice system of Montana and means by which the institutional causes of these delays could be lawfully eliminated and required a report of the findings of the study to the legislature. The Legislative Council designated the Joint Subcommittee on Judiciary to conduct the study.

Part 1

General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Suspension of the rules by supreme court. In the interest of expediting decision upon any matter before it or for other good cause shown, the supreme court may suspend the requirements or provisions of these rules on application of a party or on its own motion and may order proceedings in accordance with its direction.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;
(b) modifying or changing the verdict as provided in 46-16-702(3)(c);
(c) granting a new trial;
(d) quashing an arrest or search warrant;
(e) suppressing evidence;
(f) suppressing a confession or admission; or
(g) granting or denying change of venue.

History: En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any order or decision objected to which involves the merits or necessarily affects the judgment.

History: En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404.

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: **En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.**

Part 2

Initiation of Appeal

46-20-201. Procedure on appeal — notice of appeal. (1) An appeal shall be taken by filing a notice of appeal in the court in which the judgment or order appealed from is entered or filed.

(2) The notice of appeal shall specify the party or parties taking the appeal and shall designate the judgment or order appealed from.

(3) The clerk of the district court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address and shall mail a copy of the notice of appeal to the clerk of the supreme court. The clerk of the district court shall note on each copy served the date on which the notice of appeal was filed. If an appellant is represented by counsel, his counsel shall provide the clerk with sufficient copies of the notice of appeal to permit the clerk to comply with the requirements of this rule. Failure of the clerk to serve notice shall not affect the validity of the appeal. The notice shall be sufficient notwithstanding the death of a party or his counsel. The clerk shall note in the docket the names of the parties to whom he mails copies, with the date of mailing.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).**

46-20-202. Names of parties. The party appealing shall be known as the appellant and the adverse party as the respondent, but the title of the case shall not be changed in consequence of the appeal.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).**

46-20-203. Time for appeal from judgment. An appeal from a judgment may be taken within 60 days after its rendition.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).**

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

History: **En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.**

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

History: **En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.**

Part 3

The Record on Appeal

46-20-301. Composition of the record on appeal. The original papers and exhibits filed in the district court, the transcript of proceedings, if any, and a certified copy of the docket entries prepared by the clerk of the district court shall constitute the record on appeal in all cases.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).

46-20-302. Transcript of proceedings. (1) Within 10 days after filing the notice of appeal, the appellant shall order from the reporter a transcript of such parts of the proceedings not already on file as he deems necessary for inclusion in the record. In all cases where the appellant intends to urge insufficiency of the evidence to support the verdict, order, or judgment in the district court, it shall be the duty of the appellant to order the entire transcript of the evidence. Wherever the sufficiency of the evidence to support a special verdict or answer by a jury to an interrogatory or to support a specific finding of fact by the trial court is to be raised on the appeal by the appellant, he shall be under a duty to include in the transcript all evidence relevant to such verdict, answer, or finding.

(2) Unless the entire transcript is to be included, the appellant shall within the time above provided file and serve on the respondent a description of the parts of the transcript which he intends to include in the record and a statement of the issues which he intends to present on the appeal. If the respondent deems a transcript of other parts of the proceedings to be necessary, he shall within 10 days after such filing and service order such parts from the reporter or procure an order from the district court requiring the appellant to so do.

(3) The cost of producing the transcript shall be paid by the appellant, or he shall make satisfactory arrangements with the reporter for the payment of such cost. If the appellant considers that any part of the record designated by the respondent for inclusion is unnecessary for the determination of the issues presented, he shall advise the respondent. The district court may impose upon the respondent the cost of producing any part which it deems unnecessary for the determination of the issues.

(4) The reporter shall certify the correctness of the transcript.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b).

46-20-303. Indigent appeals. (1) Upon imposition of any sentence in a criminal case, a defendant may file in the trial court a petition requesting that he be furnished with a transcript of the proceeding at his trial. The petition shall be verified by the petitioner and shall state facts showing that he is at the time of filing the petition without financial means to pay for the transcript. If the trial judge who imposed sentence or in his absence any judge of the court finds that the defendant is without financial means with which to obtain the transcript of the proceedings at his trial, he shall order the official court reporter to transcribe an original and copy of his notes of the proceedings at the trial. The original of the report of proceedings shall be filed with the clerk of the trial court, and the copy shall be delivered to the defendant without charge.

(2) If the petition provided for in subsection (1) is denied by the trial court, a petition so to proceed may be filed in the supreme court within 30 days after entry of the denial. The petition shall be accompanied by a copy of the verification filed in the trial court and a copy of the statement of reasons for denial given by the trial court.

History: En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.

46-20-304. Statement of the evidence or proceedings when no transcript available. (1) If no report of the evidence or proceedings at a hearing or trial was made or if a transcript is unavailable, the appellant may, within 10 days from the hearing or trial or such time extended as the district court may for good cause shown permit, prepare a statement of the evidence or proceedings from the best available means, including his recollection. The statement shall be served on the respondent, who may serve objections or propose amendments thereto within 10 days after service.

(2) Thereupon, the statement and any objections or proposed amendments shall be submitted for settlement and approval to the district judge who handled the proceedings and, as settled and approved, shall be included by the clerk of the district court in the record on appeal. A judge may settle and approve such records after he ceases to be a judge. If such judge before the statement is settled and approved dies, is removed from office, becomes disqualified, is absent from the state, or refuses to settle and approve the statement, it shall be settled and approved in such manner as the supreme court may direct.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).

46-20-305. Agreed statement as the record on appeal. In lieu of the record on appeal, as defined in 46-20-301, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the district court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issue presented. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the issues raised by the appeal, shall be approved by the district court and shall then be certified to the supreme court as the record on appeal and transmitted thereto by the clerk of the district court within the time provided by 46-20-311 through 46-20-313. Copies of the agreed statement may be filed as the appendix required by 46-20-410.

History: En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).

46-20-306. Correction or modification of the record. If any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth. If anything material to either party is omitted from the record by error or accident or is misstated therein, the parties by stipulation or the district court, either before or after the record is transmitted to the supreme court, on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected and, if necessary, that a supplemental record be certified and transmitted. All other questions as to the form and content of the record shall be presented to the supreme court.

History: **En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).**

46-20-307 through 46-20-310 reserved.

46-20-311. Transmission of the record. (1) The record on appeal, including the transcript necessary for the determination of the appeal, shall be transmitted to the supreme court within 40 days after the filing of the notice of appeal unless the time is shortened or extended by an order entered under 46-20-312 or 46-20-313. Promptly after filing the notice of appeal, the appellant shall comply with the provisions of 46-20-302 and shall take any other action necessary to enable the clerk to assemble and transmit the record. If more than one appeal is filed, each appellant shall comply with the provisions of 46-20-302 and this subsection and a single record shall be transmitted within 40 days after the filing of the final notice of appeal.

(2) When the record is complete for purposes of the appeal, the clerk of the district court shall transmit it to the clerk of the supreme court. The clerk shall number the documents comprising the record and shall transmit with the record a numbered list of the documents, identifying each with reasonable definiteness. Documents in bulky containers and physical exhibits other than documents shall not be transmitted by the clerk unless he is directed to do so by a party or by the clerk of the supreme court. A party must make advance arrangements with the clerk of the district court for the transportation of bulky or weighty exhibits and with the clerk of the supreme court for their receipt. Transmission of the record is effected when the clerk of the district court mails or otherwise forwards the record to the supreme court. The clerk of the district court shall indicate by endorsement on the face of the record or otherwise the date upon which it is transmitted to the supreme court.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).**

46-20-312. Extension of time for transmission of record. (1) The district court may extend the time for transmitting the record. The request for extension must be made within the time originally prescribed or within an extension previously granted, and the district court shall not extend the time to a day more than 90 days from the date of filing of the first notice of appeal.

(2) If the district court is without authority to grant the relief sought or has denied a request therefor, the supreme court may on motion extend the time for transmitting the record or may permit the record to be transmitted and filed after the expiration of the time allowed or fixed.

(3) A motion for an extension of time for transmitting the record made in either court shall show that the inability of the appellant to cause timely transmission of the record is due to causes beyond his control or to circumstances which may be deemed excusable neglect. If a request for an extension of time for transmitting the record has been previously denied, the motion shall set forth the denial and shall state the reasons therefor, if any were given.

History: **En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).**

46-20-313. Reduction of time for transmission of record. The district court or the supreme court may require the record to be transmitted and the appeal to be docketed at any time within the time otherwise fixed or allowed therefor.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-314. Retention of record in district court by order of court. (1) The supreme court may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

(2) If the record is required in the district court for use there pending the appeal, the district court may make an order to that effect and the clerk of the district court shall retain the record and shall transmit a copy of the order and of the docket entries together with such parts as the parties may designate.

(3) If the record is retained in the district court by order of either court, the clerk of the district court shall retain it subject to the order of the supreme court and transmission of the copy of the docket entries shall constitute transmission of the record.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).

46-20-315. Stipulation of parties that parts of record be retained. The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the supreme court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

History: En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).

46-20-316. Docketing the appeal. The clerk shall enter the appeal upon the docket at or before the time of filing the record. An appeal shall be docketed under the title given to the action in the district court with such addition as is necessary to indicate the identity of the appellant.

History: En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).

46-20-317. Filing of the record. Upon receipt of the record by the clerk of the supreme court following its timely transmittal and after the appeal has been timely docketed, the clerk shall file the record without the necessity of a docketing fee. The clerk shall immediately give notice to all parties of the date on which the record was filed.

History: En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).

46-20-318. Dismissal for failure to cause timely transmission — transmission at instance of respondent. (1) If the appellant fails to cause timely transmission of the record, any respondent may file a motion in the supreme court to dismiss the appeal. The motion must be supported by:

(a) a certificate of the clerk of the district court showing the date and substance of the judgment or order from which the appeal was taken, the date on which the notice of appeal was filed, and the expiration date of any order extending the time for transmitting the record; and

(b) proof that 7 days' notice in writing has been served on the appellant that application will be made for dismissal of the appeal.

(2) Instead of filing a motion to dismiss the appeal, the respondent may cause the record to be transmitted and may docket the appeal, in which event the appeal shall proceed as if the appellant had caused it to be docketed.

History: **En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.**

46-20-319. Effect of dismissal. The dismissal of an appeal is in effect an affirmance of the judgment or order appealed from unless the dismissal is expressly made without prejudice to another appeal.

History: **En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.**

Part 4

Briefs

46-20-401. Brief of the appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(1) a table of contents with page references and a table of cases (alphabetically arranged), statutes, and other authorities cited with references to the pages of the brief where they are cited;

(2) a statement of the issues presented for review;

(3) a statement of the case, which shall first indicate briefly the nature of the case and its disposition in the court below;

(4) a statement of the facts relevant to the issues presented for review with references to the pages of the parts of the record at which material facts appear (see 46-20-407);

(5) an argument, which may be preceded by a summary and which shall contain the contentions of the appellant with respect to the issues presented and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on;

(6) a short conclusion stating the precise relief sought.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).**

46-20-402. Brief of the respondent. The brief of the respondent shall conform to the requirements of subsections (1) through (5) of 46-20-401, except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the appellant.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).**

46-20-403. Reply brief. The appellant may file a brief in reply to the brief of the respondent. The reply brief must be confined to new matter raised in the brief of the respondent. No further briefs may be filed except with leave of court.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).**

46-20-404. Brief of an amicus curiae — oral argument. A brief of an amicus curiae may be filed only if accompanied by written consent of all parties or by leave of court granted on motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. A motion of an amicus curiae for leave to participate in the oral argument will be granted only for extraordinary reasons.

History: En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.

46-20-405. Filing and service of briefs. (1) The appellant shall serve and file his brief within 30 days after the date on which the record is filed. The respondent shall serve and file his brief within 30 days after service of the brief of the appellant. The appellant may serve and file a reply brief within 14 days after service of the brief of the respondent, but except for good cause shown, a reply brief must be served and filed at least 3 days before argument.

(2) Six copies of each brief shall be filed with the clerk of the supreme court unless otherwise ordered by the court, and one copy of each brief shall be served on counsel for each party separately represented. The clerk will not accept a brief for filing unless it is accompanied by acknowledgment or proof of service as required by 46-20-502.

(3) If an appellant fails to file his brief within the time provided by this section or within the time extended, a respondent may move for dismissal of the appeal. If a respondent fails to file his brief, he will not be heard at oral argument except by permission of the court.

History: En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.

46-20-406. References in briefs to parties. Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such formal designations as "appellant" and "respondent". It promotes clarity to use names or descriptive terms such as "accomplice", "decedent", etc.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).

46-20-407. References in briefs to the record. When a reference is made in the briefs to the record, the reference must be to particular parts of the record, suitably designated, and to specific pages of each part, e.g., Answer, p. 7; Motion for Suppression of Evidence, p. 3; Transcript, p. 231. Intelligible abbreviations may be used. If reference is made to an exhibit, reference shall be made to the pages of the transcript on which the exhibit was identified, offered, and received or rejected.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).

46-20-408. Reproduction of statutes, rules, etc. If determination of the issues presented requires the study of statutes, rules, etc., or relevant parts thereof, they may be reproduced in the brief or in an addendum at the end or they may be supplied to the court in pamphlet form. No such reproduction is required unless ordered by the supreme court.

History: En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).

46-20-409. Length of briefs. Except by permission of the court, briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations, and any addendum containing statutes, rules, etc.

History: **En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).**

46-20-410. Appendix to brief. (1) At any time before final decision, the supreme court may order an appendix to any brief. Also, either the appellant or respondent may, if he deems it desirable, prepare, file, and serve with his brief an appendix.

(2) Unless otherwise ordered by the supreme court, an appendix shall contain:

(a) the relevant docket entries in the proceeding below;

(b) any relevant pleading and relevant portions of the charge, finding, and opinion;

(c) the judgment, order, or decision in question; and

(d) such other parts of the record as any party deems it essential for the judges of the court to read in order to decide the issues presented. In designating parts of the record for inclusion in the appendix, the parties shall have regard for the fact that the entire record is always available to the court for reference or examination and shall not engage in unnecessary designation.

(3) (a) At the beginning of the appendix there shall appear a chronological list of the parts of the record which it contains. Each part of the record shall be listed by the descriptive title given to that part by the reference made to it in the briefs. The page or pages of the appendix at which each part of the record thus listed appears shall be set out opposite each listing in a column at the right so as to permit immediate location in the appendix of the parts of the record referred to in the briefs and contained in the appendix.

(b) The relevant docket entries in the proceeding below shall follow the list of contents. Thereafter the parts of the record shall be set out in chronological order.

(4) The original paging of each part of the record set out in the appendix shall be indicated by placing in brackets the number of the original page at the place where the page begins. Omissions in the text of papers or of testimony must be indicated by asterisks. A question and its answer may be contained in a single paragraph.

(5) Exhibits may be contained in a separate volume suitably indexed.

History: **En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.**

Part 5

Motions and Papers in General

46-20-501. Motions. (1) Unless another form is prescribed by this chapter, an application for an order or other relief shall be made by filing a motion in writing for such order or relief. The motion shall state with particularity the grounds therefor and shall set forth the order or relief sought.

(2) If a motion is supported by briefs, affidavits, or other papers, they shall be served and filed with the motion. At the time of filing a motion, counsel shall present a proposed order together with sufficient copies for service upon all counsel of record.

(3) Motions for procedural orders may be determined ex parte. The supreme court may authorize disposition of motions for procedural orders by a single judge.

(4) If a motion seeks dismissal of the appeal or other substantial relief, any party may file an answer in opposition within 7 days after service of the motion or within such time as the court may direct.

(5) Motions, supporting papers, and any response thereto may be typewritten.

History: En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. Filing and service of papers. (1) Papers required or permitted to be filed must be placed in the custody of the clerk within the time fixed for filing. Filing may be accomplished by mail addressed to the clerk, but filing shall not be timely unless the papers are actually received within the time fixed for filing. If a motion requests relief which may be granted by a single judge, the judge may permit the motion to be filed with him in which event he shall note thereon the dates of filing and shall thereafter transmit it to the clerk.

(2) Copies of all papers, including any transcript, filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by the party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(3) Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(4) Papers presented for filing shall contain acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment of proof of service but shall require such to be filed promptly thereafter.

History: En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

46-20-503. Computation of time. (1) In computing any period of time prescribed by this chapter, by an order of court or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(2) Whenever a party is required or permitted to do any act within a prescribed period after service of a paper upon him and the paper is served by mail, 3 days shall be added to the prescribed period.

History: En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

46-20-504. Permission to take record and other papers from clerk's office. The records and other papers of the supreme court shall not be taken therefrom except by counsel pursuant to a written order of a justice of the court, which order shall specify the time the same may be retained out of the clerk's office. The court or a justice thereof may require the same to be returned within a shorter period upon notice. The clerk shall preserve each order and counsel's receipt until the papers therein mentioned shall be returned.

History: En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. Printing format of documents. (1) Briefs, appendices, and separate volumes of exhibits may be produced by standard typographic printing or by any duplicating or copying process capable of producing a clear black image on white paper. Typewritten copies of briefs, appendices, and separate volumes of exhibits may not be submitted without permission of the chief justice of the supreme court, except in behalf of parties allowed to proceed in forma pauperis. Pica solid is the smallest letter and the most compact form of composition allowed for all printed matter.

(2) Briefs, appendices, and separate volumes of exhibits shall be on white uncalendered book paper in book or booklet form. If produced by the standard typographic printing process, the pages shall be 10 inches long and 7 inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. If produced by a duplicating or copying process, the pages shall be 11 inches long and 8 ½ inches wide with a margin on the outer edge not less than 1 inch wide and on the inner edge not less than 2 inches wide. The pages shall be fastened at the side and numbered at the top.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).

46-20-512. Typewritten papers and motions. (1) Papers not required to be produced in a manner prescribed by 46-20-511 shall be plainly and legibly written by a typewriter with a new black ribbon and new black carbon paper of good grade in double spacing, except that quotations may be single spaced, on one side only of white typewriter paper 8 ½ inches wide and 13 inches long, numbered at the bottom, with a ruled margin of 1 ½ inches on the left-hand side of the page and 1 inch on the right-hand side and numbered lines, not more than 32 lines to the page. The pages shall be bound at the left-hand side into volumes not containing more than 250 pages. If the pages number 50 or less, they may be bound at the top.

(2) In collating typewritten papers the copies shall not be mixed, but each copy shall consist throughout of uniform pages. Each page of every copy shall be opaque and each line of print thereon plainly legible. The difficulty of examining transparent, illegible, and nonuniform typewritten copies has become so great that this section will be strictly applied and papers not complying with it will not be received.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).

46-20-513. First page and cover of papers. All papers shall be bound in cardboard or pasteboard covers unless bound at the top under 46-20-512, in which case they may be bound in cover paper. On the first page and cover of all papers must be stated the title of the supreme court; the title of the case as in the court below, adding to the words "plaintiff" and "defendant", the words "appellant" and "respondent" as the case may require; the names of counsel for appellant and respondent; the title of the papers, as "Appellant's Brief", "Appendix to Appellant's Brief", etc.; and the venue from which the appeal is taken.

History: En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).

Part 6

Oral Argument

46-20-601. Calendar. (1) Thirty days after the appellant's brief has been filed, the cause shall be placed on the calendar as ready for oral argument.

(2) Causes against defendants held in custody will be set for argument by the court in advance of causes against defendants on bail unless for good cause the court shall otherwise order.

History: En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).

46-20-602. Time for oral argument. The clerk shall advise all parties of the time and place at which oral argument will be heard. A request for postponement of the hearing must be made by motion filed reasonably in advance of the date fixed for hearing.

History: En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).

46-20-603. Conduct of oral argument. (1) Upon oral argument of an appeal or original proceeding, 40 minutes will be allowed appellant or applicant and 30 minutes to respondent. If counsel is of the opinion that additional time is necessary for the adequate presentation of his argument, he may request such additional time as he deems necessary by motion filed reasonably in advance of the date fixed for hearing. A party is not obliged to use all of the time allowed, and the court may terminate the argument whenever in its judgment further argument is unnecessary.

(2) The appellant or applicant is entitled to open and conclude the argument. The opening argument shall include a fair statement of the case, and the closing argument shall be limited to rebuttal of respondent's argument. Counsel will not be permitted to read at length from briefs, records, or authorities.

(3) If physical exhibits other than documents are to be used at the hearing, counsel shall arrange to have them placed in the courtroom before the court convenes on the date of the hearing. After the hearing, counsel shall cause the exhibits to be removed from the courtroom unless the court otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after notice is given by the clerk, they shall be destroyed or otherwise disposed of as the clerk shall think best.

History: En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).

46-20-604. Failure to appear — submission on briefs. (1) If counsel for a party fails to appear to present argument, the court may hear argument on behalf of a party whose counsel is present and the case will be decided on the briefs and the argument heard. If no counsel appear for any party, the case will be decided on the briefs unless the court shall otherwise order.

(2) By agreement of the parties, a case may be submitted for decision on the briefs, but the court may direct that the case be argued.

History: En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).

Part 7

Action by Court

46-20-701. Elements of record court considers on review. Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant unless the record shows that the error was prejudicial.

History: En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412.

46-20-702. Types of errors noticed on appeal. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Defects affecting jurisdictional or constitutional rights may be noticed although they were not brought to the attention of the trial court.

History: En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425.

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.

46-20-704. Entry and notice of orders and judgments. The notation of a judgment or order in the docket constitutes entry thereof. Upon entry of a judgment or order, the clerk shall promptly mail to all parties a copy of the judgment or order and notice of the date of entry thereof.

History: En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.

46-20-705. Petitions for rehearing. (1) A petition for rehearing may be filed within 10 days after the decision of the supreme court has been rendered unless the time is shortened or enlarged by order. The adverse party shall have 7 days thereafter in which to serve and file his objections thereto. Extensions of time will be granted only upon showing of unusual merit and in no event in excess of 10 days.

(2) A petition for rehearing may be presented upon the following grounds and none others:

(a) that some facts material to the decision or some question decisive of the case submitted by counsel was overlooked by the court; or

(b) that the decision is in conflict with an express statute or controlling decision to which the attention of the court was not directed.

(3) Oral argument in support of the petition will not be permitted. Six copies of the petition, produced in accordance with part 5 of this chapter, shall be filed with the clerk.

History: En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423; amd. Sec. 1, Ch. 294, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "No reply to a petition for rehearing will be received unless requested by the court, but a petition for rehearing will ordinarily not be granted in the absence of such a request." from (3).

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;

(2) if he is on bail, direct that his bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

Section

46-21-101. Circumstances in which validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. What grounds for relief waived if not raised.

Part 2 — Action of Court

46-21-201. Proceedings on the petition.
46-21-202. Record must be kept.
46-21-203. Review.

Part 1

Initiating Proceedings

46-21-101. Circumstances in which validity of sentence may be challenged. A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court which imposed the sentence or the supreme court to vacate, set aside, or correct the sentence.

History: En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601; amd. Sec. 1, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "or any justice of the supreme court" following "the supreme court" near the end of the section.

46-21-102. When petition may be filed. A petition for such relief may be filed at any time within 5 years of the date of the conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604; amd. Sec. 2, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "within 5 years of the date of the" for "after".

46-21-103. Commencement of proceedings. The proceeding shall be commenced by filing with the clerk of the court in which the conviction took place or the clerk of the supreme court a verified petition. The clerk shall docket the petition upon its receipt and bring the same promptly to the attention of the court.

History: En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602.

46-21-104. Contents of petition. The petition shall identify the proceeding in which the petitioner was convicted, give date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations. The petition shall have attached thereto affidavits, records, or other evidence supporting its allegations or shall state why the same are not attached. They shall identify any previous proceedings that the petitioner may have taken to secure relief from his conviction. The petition must be accompanied by a supporting memorandum including appropriate arguments and citations and discussion of authorities.

History: En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603; amd. Sec. 3, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "Arguments" and inserted "The petition must be accompanied by a supporting memorandum including appropriate arguments" at the beginning of the last sentence; deleted "shall be omitted from this petition" following "discussion of authorities" at the end of the last sentence.

46-21-105. What grounds for relief waived if not raised. All grounds for relief claimed by a petitioner under this chapter must be raised in his original or amended petition. Any grounds not so raised are waived unless the court on hearing a subsequent petition finds grounds for relief asserted therein which could not reasonably have been raised in the original or amended petition. When a petitioner has been afforded a direct appeal of his conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in his original or amended petition.

History: En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607; amd. Sec. 4, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "other than constitutional grounds" following "Any grounds" in the second sentence; added the last sentence referring to direct appeal grounds.

Part 2

Action of Court

46-21-201. Proceedings on the petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place and the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testimony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605; amd. Sec. 5, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Following "conviction took place", added the material relating to the attorney general and the responsive pleading ending with "state a claim for relief or it may".

46-21-202. Record must be kept. A court which entertains a petition pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606.

46-21-203. Review. Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the petition. The appeal must be taken within 60 days of the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608; amd. Sec. 6, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "60 days of" for "6 months from".

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

Section
46-22-101. Who may prosecute writ.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ.
46-22-202. By whom issued and before whom returnable.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Contents of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Contents of return.
46-22-302. Production of person — exception for infirmity or illness.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence — depositions.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by state.

Part 1

Availability of Writ

46-22-101. Who may prosecute writ. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of his liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint and, if illegal, to be delivered therefrom.

(2) Relief under this chapter is not available to attack the validity of the conviction of a person who has been adjudged guilty of an offense in a court of record and has exhausted his remedy of appeal. Relief for such purposes is limited to the provisions of Title 46, chapter 21.

History: En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701; amd. Sec. 7, Ch. 195, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "Except as provided in subsection (2)" in (1); added subsection (2).

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting his substantial rights.

History: En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716.

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.

Part 2

Issuance of Writ

46-22-201. Application for writ. (1) Application for the writ is made by petition signed either by the party for whose relief it is intended or by some person in his behalf. It must specify:

(a) that the person in whose behalf the writ is applied for is unlawfully imprisoned or restrained of his liberty;

(b) why the imprisonment or restraint is unlawful;

(c) the place where and the officer or person by whom he is so confined or restrained.

(2) All the parties must be named if they are known or described if they are not known.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979.

46-22-202. By whom issued and before whom returnable. The writ of habeas corpus may be granted:

(1) by the supreme court or any justice thereof upon petition by or on behalf of any person restrained of his liberty in this state. When so issued it may be made returnable before the court or any justice thereof or before any district court or judge thereof.

(2) by a district court or a judge thereof upon petition by or on behalf of any person restrained of his liberty in the court's or judge's respective district or county.

History: En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979.

46-22-203. Writ granted without delay. Any court or judge authorized to grant the writ to whom a petition therefor is presented must, if it appears that the writ ought to issue, grant the same without delay.

History: En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705.

46-22-204. Writ and process may issue at any time. Any writ or process authorized by this chapter may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715.

46-22-205. Contents of writ. (1) The writ must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command him to have the body of such person before the court or judge before whom the writ is returnable at a time and place therein specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issue or issues to be determined upon return of the writ are not stated therein or in an order attached thereto, then a copy of the petition must be attached to the writ.

History: **En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707.**

46-22-206. Service of writ. (1) The writ must be served upon the person to whom it is directed. If the person to whom the writ is directed represents a state institution, a copy of the writ shall be served upon the attorney general. If such person represents a county institution, a copy of the writ shall be served upon the county attorney.

(2) The writ shall be served by the clerk of court, the sheriff, or any other officer directed to do so by the court.

(3) The writ shall be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the court or judge.

History: **En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708.**

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Contents of return. (1) The person upon whom the writ is served must make a return and state in his return:

(a) whether he has the party in his custody or under his power or restraint;

(b) if he has the party in his custody or under his power or restraint, the authority for and cause of such custody or restraint; if the detention is by legal process, a copy thereof must be annexed to the response;

(c) if he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ but has transferred such custody or restraint to another, particularly to whom, at what time and place, for what cause, and by what authority such transfer took place.

(2) The return must be signed by the person making the same and, except when such person is a sworn public officer and makes such return in his official capacity, it must be verified by his oath.

History: **En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709.**

46-22-302. Production of person — exception for infirmity or illness. The person commanded by the writ shall bring the detained person according to the command of the writ unless it is made to appear by affidavit that because of sickness or infirmity such person cannot be brought before the judge without danger to his health. If the judge is satisfied with the truth of the affidavit, he may proceed and dispose of the case as if the party had been produced or the hearing may be postponed until the party can be present.

History: **En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710.**

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, he shall be adjudged in contempt of court.

History: En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706.

46-22-304. Hearing on return. (1) The court or judge before whom the writ is returned must immediately after the return proceed to hear and examine the return.

(2) The hearing on the writ may be summary in nature.

History: En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711.

46-22-305. Production of evidence — depositions. Evidence may be produced and compelled as in civil actions. Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ.

History: En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712.

46-22-306. Disposition of petitioner. If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceeding and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed.

History: En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713.

46-22-307. Appeal by state. An appeal may be taken to the supreme court by the state from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal. The appeal shall be taken in the same manner as in civil actions.

History: En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714.

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

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Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department of institutions.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205.

46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet at least twice each month at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204; amd. Sec. 1, Ch. 234, L. 1981.

Compiler's Comments

1981 Amendment: Added subsection (4).

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

46-23-106. Information from courts to board. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210.

46-23-107. Orders of board — reviewability. Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance with the terms of parts 1, 2, 3, and 10 of this chapter.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1).

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Part 2

Granting of Parole

46-23-201. Prisoners eligible for parole. (1) Subject to the following restrictions, the board shall release on parole by appropriate order any person confined in the Montana state prison, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community:

(a) No convict serving a time sentence may be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except that a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) No convict serving a life sentence may be paroled until he has served 30 years, less the good time allowance provided for in 53-30-105.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2).

46-23-202. Investigation of prisoner by board. (1) Within 2 months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3).

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.

46-23-204. All persons may be heard — counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board, and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: **En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).**

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: **En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).**

46-23-208 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof.

History: **En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(4).**

46-23-216. Duration of parole. (1) A prisoner on parole who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: **(1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222.**

46-23-217. Service of term for additional crime. A prisoner who commits a crime while at large on parole or conditional release and who is convicted and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).

Part 3

Executive Clemency

46-23-301. Cases of executive clemency — approval of board. The board shall investigate and report to the governor with respect to all cases of executive clemency. A majority of the board shall advise, investigate, and approve each such case before the action of the governor shall be final. All applications for executive clemency shall be made to the board, which shall cause an investigation to be made of all the circumstances surrounding the crime for which the applicant was convicted and as to the individual circumstances relating to social conditions of the applicant. If the board or a majority thereof approves such application for executive clemency, it shall advise the governor and recommend action to be taken.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a recommendation of executive clemency to the governor, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ....; 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon or reprieve, commutation, restoration of citizenship, remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the petitioner and the convict.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any case, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230.

46-23-316. Governor's report to legislature. The governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or reprieve, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231.

Part 4

Supervised Release Program

Part Compiler's Comments

Preamble: The preamble attached to SB 286 (Ch. 583, L. 1981) provided: "WHEREAS, a prisoner furlough program currently exists under sections 46-23-401 through 46-23-426, MCA;

WHEREAS, the Legislature realizes that the above-named statutes are no longer workable and cause conflicts of laws and complication of efforts;

WHEREAS, the Legislature supports the basic intent of the prisoner furlough program, hereafter referred to as the supervised release program, to provide education, training, and betterment of selected prisoners and the increase such prisoners' responsibility to society; and

WHEREAS, the Legislature believes that the program can be administered in a more efficient and meaningful manner."

Severability: Section 12, Ch. 583, L. 1981, was a severability section.

46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of institutions provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(6) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(7) "Supervising agent" means a probation and parole officer of the department.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218; amd. Sec. 1, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted the definition of "applicant" for ""Applicant" means any prisoner who has signed an application to participate in the prisoner furlough program" in (1); deleted "jail" as a defined term; inserted "state" before "district court" in the definition of prisoner in (4); substituted "or" for "and" after "Montana state prison at Deer Lodge" in the definition of state prison in (5); substituted "designated by the department" for "under the direction of the department" in the definition of state prison in (5); substituted "Sponsor" for "Supervising agency" as the defined term in (6); changed "furlough program" to "supervised release program" at the end of (6); and added subsection (7).

46-23-402 through 46-23-404. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-402. En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department is authorized and directed to establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the above programs;

(3) approval of the sponsor;

(4) review of a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement this part.

History: En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979; amd. Sec. 2, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Chapter 583 substituted "supervised release program" for "furlough program" near the beginning of the section; inserted "(the Montana Administrative Procedure Act)" after "Title 2, chapter 4" near the beginning of the section; substituted (2) as it presently reads for "participating in an educational, treatment, or training program"; substituted "the sponsor" for "supervising agency" at the end of (3); substituted (4) as it presently reads for "review of determinations in furlough application"; and added subsections (5) through (8).

Statement of Intent: The statement of intent attached to HB 248 (Ch. 635, L. 1979) provided: "Section 2 (section 46-23-405, MCA) directs the Department of Institutions to adopt rules which include guidelines concerning prisoner eligibility to participate in the prisoner furlough program. Such guidelines are intended to provide objective criteria for evaluating each individual's chance for success such as the type of crime for which he is incarcerated, prior felonies, revocations of parole, escapes, and time to parole eligibility. Each prisoner is to be given points under each criterion, and each criterion is to be weighted in accordance with its relative importance."

46-23-406. Repealed. Sec. 13, Ch. 583, L. 1981.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).

46-23-407 through 46-23-410 reserved.

46-23-411. Application to participate — eligibility. (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 15 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

History: En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979; amd. Sec. 3, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "confined in the state prison" after "Any prisoner" at the beginning of (1); substituted "supervised release program" for "furlough program" in the middle of (1); deleted "qualifies under the rules established by the department" after "at least one-half of the time required to be considered for parole and" near the end of (1); added "not more than 15 months remain before he is eligible for parole"; and added subsections (2) and (3).

46-23-412. Board's action on application. The board shall approve or deny the application of each prisoner after careful study of the prisoner's release plans, criminal history, and all other pertinent case material. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.

History: En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5); amd. Sec. 4, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Deleted "At the meeting of the board following the signing of any prisoner's application" at the beginning of the section; substituted "prisoner's release plans" for "prisoner's furlough plans" in the middle of the first sentence; deleted a list of rules to be observed when the board meets to consider an application; deleted "Final authority in all matters pertaining to prisoner furloughs is in the department." at the end of the section; and added the last sentence of the section.

46-23-413 through 46-23-415. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-413. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).

46-23-414. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).

46-23-415. En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agent. The department shall be responsible for the activities of a prisoner participating in a supervised release program under this part. The department may delegate jurisdictional supervision to a supervising agent who shall be responsible for the activities of the prisoner during his supervised release.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1); amd. Sec. 5, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "supervised release program" for "furlough program" near the end of the first sentence; and substituted the last sentence for "The department may delegate jurisdictional supervision of work furlough participants to the adult parole and probation field service. The supervising agency shall be responsible for those activities of a furloughed prisoner for which it is responsible in the written furlough agreement."

46-23-422. Violation of supervised release program by prisoner — revocation. (1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(2) The prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the supervised release conditions occurred. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the department. The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 328 substituted "department of institutions" for "board of pardons" after "hearing officer of the" in (2). The Code Commissioner deleted "of institutions" because "department" is defined in 46-23-401.

Chapter 583 substituted (1) for "If any prisoner released from actual prison confinement under the furlough program fails to comply with the rules of the furlough agreement, he shall be called by the department or by the supervising agency to appear before the department or supervising agency"; deleted "If a conference is not sufficient to resolve the situation and if the prisoner continues in his noncompliance" at the beginning of (2); substituted "whether a violation of the supervised release conditions occurred" for "whether a violation of the furlough agreement exists" at the end of the first sentence of (2); substituted "department" for "board of pardons" at the end of the third sentence of (2); deleted "on furlough" after "The prisoner" at the beginning of the fourth sentence of (2); substituted the last sentence in (2) for "If reasonable grounds are established for violation of the furlough agreement, the furlough shall be cancelled and the prisoner shall be returned to the prison"; substituted (3) for "At the next meeting of the board of pardons after the return of the prisoner to the prison, the prisoner shall be granted a due process hearing in order to determine if the prisoner has in fact violated the terms of the prisoner's furlough release. If it is determined that the prisoner has in fact violated the terms of the prisoner's furlough, the prisoner shall remain at the prison"; and substituted "supervising agent and a new supervised release program shall be worked out" for "parole agent and the new furlough arrangement shall be worked out" at the end of (4).

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: **En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981.**

Compiler's Comments

1981 Amendment: Rewrote entire section. The section formerly provided "For the purpose of this part, the provisions relating to escape in 45-7-306 shall apply unless aggravating circumstances require a more severe penalty."

Parts 5 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: **En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301.**

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: **En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.**

46-23-1003. Qualifications of probation and parole officers. Probation and parole officers shall have at least a college degree and shall have received at least some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

History: **En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1.**

46-23-1004. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303.

46-23-1005 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

History: En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304.

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of

his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing shall be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as provided in 46-23-1025.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2).

46-23-1025. Report to and action by the board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report shall be accompanied by the findings of the hearings officer.

(2) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(3) If it appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it will be counted as time served under the sentence.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3).

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).

Part 11

Interstate Supervision of Probation and Parole

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: **En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.**

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: **En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.**

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

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Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: **En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.**

Part 2

Extradition to Another State from This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: **En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.**

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: **En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.**

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: **En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).**

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: **En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.**

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance..

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the

purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedure incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year. When so arrested, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. Thereafter this answer shall be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114.

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Part 4

Extradition to This State from Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or
(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123; amd. Sec. 172, Ch. 575, L. 1981.

Compiler's Comments

1981 Amendment: Substituted "governor" for "government" in the first sentence of (5).

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: (1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

Part 1 — Contents of Agreement

Section

46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

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Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial at the next term of court after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant

any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of

imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131.

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: **En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.**

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: **En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.**

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: **En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.**

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed $50,000, or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: **En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134; amd. Sec. 7, Ch. 198, L. 1981.**

Compiler's Comments

1981 Amendment: Subsections (3) and (4) of sec. 7, Ch. 198, L. 1981, provided: "(3) There is added to those sections listed in subsection (4) of this section, following any language in those sections specifying the term of imprisonment for which an offender may be imprisoned but without specifying a fine that may be ordered to be paid, the words "or shall be punished by a fine of not more than $50,000 or by both such fine and imprisonment", or other similar language allowing the court to fine the offender a maximum of $50,000 in lieu of imprisonment or to punish the offender by both a fine and imprisonment. The code commissioner shall change the listed sections in accordance with this section and may make minor incidental adjustments consistent with this section as may be necessary to reflect the intent of this section without changing the meaning of the listed sections as amended by this section.

(4) 13-27-205, 13-27-206, 19-11-207, 20-9-435, 23-5-106, 30-13-142, 32-1-236, 32-1-473, 32-1-505, 45-5-104, 45-5-204, 45-5-105, 45-5-201, 45-5-203, 45-5-204, 45-5-304, 45-5-505, 45-5-603, 45-5-613, 45-5-621, 45-6-101 through 45-6-103, 45-6-204, 45-6-301, 45-6-316, 45-6-317, 45-6-325, 45-6-327, 45-7-101, 45-7-102, 45-7-201, 45-7-206 through 45-7-208, 45-8-106, 45-8-215, 45-8-318, 45-8-334, 45-8-335, 45-9-101(4), 45-9-102(4), 45-9-103(3), 45-9-107, 46-18-213, 46-18-502, 46-31-204, 50-38-107, 61-3-604, 81-5-102, and 81-9-118." See 46-18-231, also enacted by Ch. 198, L. 1981, which is related to the amendment of this section.

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

Section
49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of nonelectors.
49-1-204. Rights and duties of citizens of other states.

Part 1

Basic Personal Rights

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

49-1-102. Freedom from discrimination. The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) the right to obtain and hold employment without discrimination; and

(2) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Part 2

Basic Political Rights

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

49-1-203. Rights and duties of nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

CHAPTER 2

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Part 1

General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(14) "National origin" means ancestry.

(15) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(16) "Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device.

(17) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(18) "Staff" or "commission staff" means the staff of the commission for human rights.

History: En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).

Part 2

Commission for Human Rights

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter.

Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Part 3

Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, marital status, creed, religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2).**

49-2-304. Discrimination in public accommodations. Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(1) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, creed, religion, color, or national origin;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, age, physical or mental handicap, color, or national origin.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3).**

49-2-305. Discrimination in housing. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, creed, religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make a written or oral inquiry or record of the sex, race, creed, religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent the housing accommodation or property; or

(d) to refuse to negotiate for a sale or to make a housing accommodation or property unavailable because of sex, race, creed, religion, age, physical or mental handicap, color, or national origin.

(2) A private residence designed for single-family occupancy in which sleeping space is rented to guests and in which the landlord also resides is excluded from the provisions of subsection (1).

(3) It is also an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted subsection (1)(d); substituted "subsection (1)" for "this section" at the end of (2); added subsection (3).

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).**

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: **En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7).**

49-2-308. Discrimination by the state. It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(1) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(2) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a

person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(3) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6).

Part 4

Exceptions to Prohibitions

49-2-401. Procedure for claiming exemption. A person, educational institution, financial institution, or governmental entity or agency who or which seeks to be exempted from the requirements of part 3 of this chapter may petition the commission for a declaratory ruling as provided in 2-4-501 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden is on the petitioner to demonstrate that an exemption should be granted.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2).

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: **En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).**

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) A complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered. Any complaint not filed within the time set forth herein may not be considered by the commission.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979.**

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).**

49-2-503. Temporary relief by court order. (1) At any time after a complaint is filed under this chapter alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint.

(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices.

History: **En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3).**

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially.

If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) The order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section

49-3-101. Definitions.
49-3-102. What local governmental units affected.
49-3-103. Permitted distinctions.
49-3-104. Quotas not required.

Part 2 — Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.
49-3-202. Employment referrals and placement services.
49-3-203. Educational, counseling, and training programs.
49-3-204. Licensing.
49-3-205. Governmental services.
49-3-206. Distribution of governmental funds.
49-3-207. Nondiscrimination provision in all public contracts.
49-3-208. Public accommodations laws.

Part 3 — Enforcement and Remedies

49-3-301. Cooperation with commission for human rights.
49-3-302. Annual reports to governor.
49-3-303. Remedies for individuals.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "State and local governmental agencies" means:

(a) all branches, departments, offices, boards, bureaus, commissions, agencies, university units, colleges, and other instrumentalities of state government; and

(b) counties, cities, towns, school districts, and other units of local government and all instrumentalities of local government.

(2) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

49-3-103. Permitted distinctions. Nothing in this chapter shall prohibit any public or private employer:

(1) from enforcing a differentiation based on age or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(2) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual; or

(3) from discharging or otherwise disciplining an individual for good cause.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: **En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979.**

49-3-204. Licensing. No state or local governmental agency may grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter.

History: **En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979.**

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

History: **En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979.**

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: **En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324.**

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services shall contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract.

History: **En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979.**

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: **En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.**

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: **En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.**

49-3-302. Annual reports to governor. All state governmental agencies which report to the governor shall include in their annual reports to the governor activities undertaken in the past year to effectuate this chapter. Such reports shall cover both internal activities and external relations with the public or with other state agencies and shall contain other information as specifically requested by the governor.

History: **En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.**

49-3-303. Remedies for individuals. (1) Any person claiming to be aggrieved by a violation of any provision of this chapter may file a complaint for redress of the violation with the commission for human rights and upon exhaustion of administrative remedies may petition the district court in the district where the complainant resides or where the alleged violation occurred for appropriate relief. The court may grant such relief, by injunction or otherwise, as it considers appropriate.

(2) The complainant may pursue a complaint in district court without filing a complaint before the human rights commission but may not then pursue the complaint before the commission.

(3) Actions under this section are original actions.

History: **En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.**

Compiler's Comments

1981 Amendment: Substituted "upon exhaustion of administrative remedies may petition" for "upon filing that complaint may, in addition, petition" in the first sentence of (1); deleted "Commencement of the administrative remedy does not preclude the judicial remedy." at the end of (1); inserted subsection (2).

CHAPTER 4

RIGHTS OF THE HANDICAPPED

Part 1 — Discrimination in Employment

Section
49-4-101. Discrimination prohibited.
49-4-102. Penalty and civil remedy.

Part 2 — Rights of the Physically Disabled

49-4-201. Short title.
49-4-202. Policy of the state.
49-4-203. Definition.
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Part 1

Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm.

History: **En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).**

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: **En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).**

Part 2

Rights of the Physically Disabled

Part Compiler's Comments

1981 Amendment: Chapter 176, L. 1981, amended this part to provide deaf persons certain rights presently accorded to the blind. It appears that the short title was overlooked in the amendment process.

49-4-201. Short title. This part may be cited as the "White Cane Act".

History: **En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.**

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, the deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.

History: **En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981.**

Compiler's Comments

1981 Amendment: Inserted "the deaf" after "visually handicapped" in first and second sentences.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.

History: **En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).**

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and the deaf" after "visually handicapped" in (1) and (2).

49-4-212. Access to housing accommodations. (1) Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled.

History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "and deaf" after "visually handicapped" in (1); inserted "or deaf" after "visually handicapped" in (2); and made minor changes in phraseology.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).

49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind or deaf person has the right to be accompanied by a guide or hearing dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide or hearing dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind or deaf person who has a guide or hearing dog or who obtains a guide or hearing dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide or hearing dog but is liable for any damage done to the premises by the guide or hearing dog.

History: En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "or deaf" after "blind" near the beginning of (1) and (2); inserted "or hearing" between "guide" and "dog" throughout.

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.

Compiler's Comments

1981 Amendment: Inserted "deaf" after "blind" near the end of the section.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Use of Public Streets

49-4-301. Who eligible for special parking permit. (1) The division of motor vehicles, department of justice, shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle; or

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6).

49-4-302. Privileges of permit holder. The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2).

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the division of motor vehicles on forms provided by the division, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the division.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

49-4-304. Card to be provided and displayed. The division of motor vehicles shall provide a card or plate that may be displayed in a motor vehicle to indicate a parking privilege granted under this part. The card or plate shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3).

49-4-305. Expiration of permit. A permit expires on December 31 of the year of issue.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7).

49-4-306. Division to publicize permit. (1) The division of motor vehicles shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The division of motor vehicles shall budget sufficient funds to accomplish the requirements of subsection (1).

History: En. Sec. 1, Ch. 32, L. 1981.

Compiler's Comments

1981 Title: The title to Ch. 2, L. 1981 (SB 79), read: "An act to require the division of motor vehicles to publicize the special parking permit provisions for handicapped persons and to budget for such advertising."

Codification Instruction: Section 2, Ch. 32, L. 1981, provided: "Section 1 is intended to be codified as an integral part of Title 49, chapter 4, part 3, and the provisions of Title 49, chapter 4, part 3, apply to section 1."

49-4-307 through 49-4-310 reserved.

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.

Part 4

Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

49-4-401. En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.

49-4-402. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-403. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-404. En. Sec. 2, Ch. 474, L. 1979.

49-4-405. En. Sec. 3, Ch. 474, L. 1979.

49-4-406. En. Sec. 4, Ch. 474, L. 1979.

Part Cross-References

Vending facilities for blind vendors, Title 18, ch. 5, part 4.

Part 5

Interpreters for the Deaf in Official Proceedings

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in 49-4-507.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

History: **En. Sec. 2, Ch. 245, L. 1979.**

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: **En. Sec. 3, Ch. 245, L. 1979.**

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: **En. Sec. 4, Ch. 245, L. 1979.**

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: **En. Sec. 5, Ch. 245, L. 1979.**

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: **En. Sec. 6, Ch. 245, L. 1979.**

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

History: **En. Sec. 7, Ch. 245, L. 1979.**

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: **En. Sec. 8, Ch. 245, L. 1979.**

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: **En. Sec. 9, Ch. 245, L. 1979.**

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: **En. Sec. 10, Ch. 245, L. 1979.**

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: **En. Sec. 11, Ch. 245, L. 1979.**

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